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RECORD, CASE No. 13,709.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 133.

JOHN C. JOHNSTON, APPELLANT,

vs.

THE STANDARD MINING COMPANY OF KANSAS CITY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 7, 1889.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 31st day of January, A. D. 1888, came C. I. Thompson, Esq., a solicitor of said court, and filed in said court a transcript of the record in a certain cause theretofore pending in the district court of the ninth judicial district of the State of Colorado, sitting within and for the county of Pitkin, and the said transcript is in words and figures as follows, to wit:

Transcript.

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

In the matter of—

JOHN C. JOHNSTON, Plaintiff,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, ISAAC W. Chatfield, Charles I. Thompson, Daniel Sayre, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants.

2 Be it remembered that heretofore and on the 15th day of October, A. D. 1887, comes plaintiff in the above-entitled action, by Messrs. Hugh Butler & Wilson and Stimson, his attorneys, and filed herein his certain complaint, which is in words and figures as follows:

STATE OF COLORADO, }
County of Pitkin. }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

JOHN C. JOHNSTONE, Plaintiff,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, ISAAC W. Chatfield, Charles I. Thompson, Daniel Sayre, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants.

The plaintiff complains of the defendant and states—

That the defendant The Fulton Mining Company is a corporation organized and existing under and by virtue of the laws of the State of Colorado.

That the defendant The Standard Mining Company of Kansas

City is a corporation organized and existing under and by virtue of the laws of the State of Missouri.

That the defendant William J. Anderson is a resident and citizen of the State of Missouri.

That on the 14th day of September, A. D. 1880, plaintiff was the owner and in possession of an undivided one-half of the J.
3 C. Johnston Lode mining claim, situated in the Roaring Fork mining district, in Pitkin county, then Gunnison county, Colorado, and more particularly described in the location certificate thereof, which is as follows:

Know all men by these presents that John C. Johnston, Joseph W. Adair, and George A. Crittenden, the undersigned, have this fourth day of August, 1880, located and claimed and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress, approved May 10, 1873, and all subsequent acts and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the J. C. Johnston lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on each side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim 200 feet running S. 44° 30′ W. from center of discovery shaft and 1,300 feet running N. 44° 30′ E. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit and within the lines of said claim, in Roaring Fork mining district, county of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, southwest corner post of claim, thence N. 44° 30′ E. at 750 feet a post, cor. No. 2, west center side line post of claim, whence brs. ledge of rocks on Mount Maggie N. 18° 45′ W., whence peak on Maroon range brs. S. 87° 10′ W.; thence S. 45° 30′ E. 300 ft. to post No. 4, N. E. corner post of claim, whence peak on Mount Sopris brs. N. 77 W., whence cliff on Aspen Mt.
4 brs. S. 37- 45′ W.; thence S. 44° 30′ W. 750 ft. to a post No. 5, east center side line of said claim, and continued course, in all 1,500 ft., to post No. 6, southeast cor. post of claim; thence N. 45° 30′ W. 300 ft. to post No. 1, the place of beginning. The discovery shaft of this claim is situated on the northwest slope of Johnston mountain. John C. Johnston owns one undivided half of said claim, Joseph A. Adair owns one undivided one-fourth of said claim, and George A. Crittenden owns one undivided one-fourth of said claim. All b'r-ngs true var. 15° 30′ E.

J. W. ADAIR. [SEAL.]
G. A. CRITTENDEN. [SEAL.]
JOHN C. JOHNSTON. [SEAL.]

Said lode was discovered on the 14th day of August, A. D. 1880.
Attest: S. A. CRITTENDEN.

Date of location, August 4th, A. D. 1880.
Date of certificate, August 4th, A. D. 1880.

Said location certificate was duly filed for record in the office of the clerk and recorder of Gunnison county, Colorado, on the 21st day of September, A. D. 1880.

Said J. C. Johnston lode or mining claim is now properly known and designated as lot No. 1436, according to the United States patent survey thereof.

That on said 14th day of September, A. D. 1880, as owner as aforesaid, the plaintiff executed a certain title bond, whereby he agreed to sell and convey to the defendant Isaac W. Chatfield an undivided one-fourth share and interest in said J. C. Johnston mining claim, with other property, for a consideration of twelve hundred dollars.

That on the 12th day of October, A. D. 1880, at Leadville, Colorado, the plaintiff, as owner as aforesaid, executed to said Chatfield a mining deed, conveying to said Chatfield all plaintiff's
5 interest in said J. C. Johnston mining claim for a stated consideration of twelve hundred dollars.

That plaintiff's interest in said mining claim at the time of the execution of said deed was an undivided one-half, and that said conveyance was in pursuance of said title bond as to the one-fourth interest thereby bonded as aforesaid, and as to the remaining one-fourth interest said conveyance was in trust for certain uses and trusts and under circumstances as follows, to wit:

It was then and there represented to plaintiff by said Chatfield and by defendants Charles I. Thompson and Daniel Sayre, who were then and there attorneys and counsel of said Chatfield, that a certain mining claim called the Smuggler No. 2 was in conflict with said J. C. Johnston mining claim, and that certain claimants of said Smuggler No. 2 mining claim had commenced or were about to commence legal proceedings to enforce their said claim of title; said Chatfield further represented that because of said adverse claims of title he could not and would not take up said title bond or option and pay twelve hundred dollars unless plaintiff would employ counsel to defend said suit or threatened suit.

Plaintiff further says that the facts about said Smuggler No. 2 mining claim and its alleged conflict with said J. C. Johnston claim are in substance as follows: That early in the year 1880 plaintiff entered into a grub-stake contract with J. C. Acheson individually, as an agent and attorney-in-fact of Edward Dunscomb and James E. Seaver, whereby plaintiff agreed to prospect for and locate mines and mining claims upon the public domain of the United States for and on behalf of plaintiff and said Acheson, Dunscomb, and Seaver jointly, and in consideration thereof said Acheson,
6 Dunscomb, and Seaver agreed to furnish and pay to plaintiff all supplies and expenses which should be required by plaintiff in prospecting for and locating and developing mining claims as aforesaid.

That plaintiff in pursuance of said agreement found indications of a lode or vein bearing silver on Smuggler mountain, in Roaring Fork mining district, then Gunnison now Pitkin county, Colorado, and thereupon proceeded to do work upon said ground, and on the

15th day of April, A. D. 1880, located a mining claim upon said supposed vein or lode, calling the same the Smuggler No. 2 mining claim.

That said location was by the direction of the said J. C. Acheson made in the joint names of plaintiff, claiming one-fourth, and Margaret Dunscomb, wife of said Edward Dunscomb, claiming three-eight-s, and Belle R. Seaver, wife of said James E. Seaver, claiming three-eight-s of said Smuggler No. 2 claim.

That after said location and long before the discovery of any vein or lode within the limits of said Smuggler No. 2 mining claim said Acheson, Dunscomb, and Seaver, and there said wives, Margaret and Belle, abandoned said mining claim and location and failed and refused to pay or furnish to plaintiff any part of the expenses or supplies which were necessary for the development and valid location of said Smuggler No. 2 claim; but that plaintiff continued to work and develop the ground covered by said claim on his own account and at his own expense.

That on the 4th day of August, A. D. 1880, plaintiff opened and discovered within the limits of said claim a vein or lode in rock in place bearing silver, and thereupon plaintiff duly located the same as the J. C. Johnston Lode mining claim for and in the names of plaintiff, claiming one-half, and G. A. Crittenden and J. W. Adair, each claiming an undivided one-fourth.

7 That said Crittenden and Adair obtained their said interests by purchase from plaintiff after his discovery of said vein.

That thereafter upon learning of said discovery and location of said J. C. Johnston claim said J. C. Acheson, for and on behalf of himself and said Edward Dunscomb and James E. Seaver and their said wives, negotiated with said Crittenden and Adair for the purchase of their said interests in said J. C. Johnston claim, and on the 10th day of August, 1880, did purchase the same for a consideration of one thousand dollars.

That at or about the same time said Acheson, for and on behalf of himself and said Dunscomb and Seaver and their wives, also negotiated with plaintiff and agreed to purchase from plaintiff an undivided one-fourth of said J. C. Johnston claim, but failed to do so.

That neither said Acheson, Dunscomb, or Seaver or their said wives, Margaret or Belle, demanded or claimed at the time of said negotiations with plaintiff or at any other time any interest in said J. C. Johnston claim except the interest purchase- by them as aforesaid of Crittenden and Adair.

Plaintiff further says that the foregoing facts respecting the location of said Smuggler No. 2 and the said J. C. Johnston claim and concerning the negotiations of Acheson, Dunscomb, and Seaver for the purchase from plaintiff of one-fourth of said J. C. Johnston claim as aforesaid were well known to said Chatfield and Thompson and Sayre, and were then and there, to wit, on said 12th day of October, A. D. 1880, at Leadville, Colorado, fully communicated to them and each of them by plaintiff.

But that notwithstanding said knowledge and information communicated as aforesaid said Chatfield, Thompson, and Sayre still insisted to plaintiff that there were certain parties who, as grantees of said Margaret Dunscomb and Belle R. Seaver, or otherwise, still claimed title under said Smuggler No. 2 location adversely to plaintiff's interests in said J. C. Johnston claim, and that legal proceedings had already been commenced or were about to be commenced to enforce said claim of title.

8 Plaintiff further says that said Chatfield and Thompson and Sayer then and there further represented that it was desirable to perfect the title of said J. C. Johnston mining claim by applying for and obtaining letters patent therefore from the United States of America, and that to that end it was best to have all the title in one person who could then make application for patent.

That to this end they had secured or would secure a conveyance from the owners of the other one-half of said J. C. Johnston mining claim.

And said Chatfield and Thompson and Sayre then and there further represented to plaintiff that for the better management and working of said J. C. Johnston property they proposed to organize and incorporate a stock company, and that to that end also they had secured or would secure the other one-half interest in said J. C. Johnston mining claim, and plaintiff is informed and believes and so states the fact to be that the defendants Isaac W. Chatfield, Charles I. Thompson, Daniel Sayre, and W. J. Wilson and Edward Dunscomb were then associated together and had agreed with each other to organize a stock company for said purpose, and that said Chatfield was then and there the agent and representative of and was acting in behalf of said association of persons, and that soon thereafter, to wit, on the 22nd day of December, A. D. 1880, the defendant The Fulton Mining Company was incorporated by the defendants Chatfield, Thompson, Sayre, Wilson, and Dunscomb.

That the defendant William J. Wilson actually paid a part of said twelve hundred dollars paid for the one-fourth interest bonded and deeded to said Chatfield by plaintiff as aforesaid, and that the defendant Dunscomb, who is and then was a brother-in-law of defendant Thompson, then owned a part of the remaining one-half interest in said J. C. Johnston claim not owned by plaintiff.

Plaintiff further says that said Chatfield and Thompson and Sayre then and there, to wit, on the said 12th day of October, A. D. 1880, at Leadville, Colorado, agreed and represented that if plaintiff would convey his remaining one-fourth interest in said property to said Chatfield, said Thompson and Sayre would defend said

9 J. C. Johnston title against said Smuggler No. 2 claim, and said Chatfield would perfect said J. C. Johnston title by applying for and obtaining letters patent therefor and would thereupon convey or cause to be conveyed to plaintiff an undivided one-eighth share and interest in said J. C. Johnston property free and clear of all costs and expenses of said patent proceedings and of said threatened litigation with said Smuggler No. 2 claim, and of all charges, incumbrances, or assessments of whatsoever kind, and would

hold the remaining one-eighth of said J. C. Johnston title conveyed as aforesaid for said Thompson and Sayre to pay for ther legal services to be performed as aforesaid and for the costs of said litigation; but it was expressly agreed and understood that if said services should not be necessary and should not be performed said Thompson and Sayre should receive nothing, and that the said remaining one-eighth should be reconveyed to plaintiff.

That thereupon at the solicitation of said Chatfield and Thompson and Sayre, and having full faith and confidence in their said representations and being himself unlearned in the law, plaintiff was induced to employ said Thompson and Sayre on said terms, and thereupon plaintiff executed his said deed conveying to said Chatfield all his interest in said J. C. Johnston mining claim aforesaid.

Plaintiff further says that in pursuance of said agreement a contract in writing was then and there drawn up by said Thompson and Sayre and signed by said Chatfield and plaintiff, whereby it was declared and agreed that said Chatfield would perfect the title to said J. C. Johnston mining claim and would thereupon convey or cause to be conveyed to the plaintiff an undivided one-eighth share and interest therein free and clear of all expenses incident
10 thereto and of the litigation aforesaid and of all other expenses relating to said J. C. Johnston mining claim.

Plaintiff further says that another contract in writing was then and there drawn up and executed between said Chatfield and said Thompson and Sayre declaring the trust upon which said Chatfield held said remaining one-eighth for said Thompson and Sayre.

That plaintiff did not read and does not know the contents of said last-mentioned writing, but that the same was made in pursuance of the agreement aforesaid of plaintiff's employment of said Thompson and Sayre for the purposes aforesaid, and that the said last-mentioned writing was left with said Thompson and Sayre; and plaintiff is informed and believes and so states the fact to be that the same is now in their possession.

Plaintiff further says that he did not keep and that he has no copy of the first-mentioned contract and writing between plaintiff and said Chatfield. The original thereof was left with said Thompson and Sayre, as plaintiff's attorneys, who then and there promised to have the same recorded in Gunnison county, Colorado, in which county said property was then situated, but said defendants have hitherto failed and refused so to record the same or to furnish plaintiff with a true copy thereof, though often requested to do so; and plaintiff is informed and believes and states that said contract and writing is now in the possession of said Thompson and Sayre.

Plaintiff further says that on or about the 14th day of December, A. D. 1880, the defendant Chatfield attempted to convey to the defendant The Fulton Mining Company all the right, title, and interest of said Chatfield in and to said J. C. Johnston mining claim;
11 but plaintiff charges and states that said attempted conveyance was before the incorporation of said The Fulton Mining Company, and that said company was not incorporated until the

22nd day of December, A. D. 1880, and that therefor- said The Fulton Mining Company acquired no title by said attempted conveyance and in any event did not acquire the equitable title of this plaintiff in said property.

That the incorporators of the said Fulton Mining Company were the defendants Edward Dunscomb, Isaac W. Chatfield, Charles I. Thompson, Daniel Sayre, and William J. Wilson, and the same defendants were the directors of said company for the first year of its existence, and that each and all of said incorporators and directors had at and before said attempted conveyance by said Chatfield to said The Fulton Mining Company full knowledge and actual notice of the uses and trusts and conditions upon which said Chatfield held J. C. Johnston title as aforesaid.

Plaintiff further says that he is informed and believes that on or about the — day of February, A. D. 1881, the said The Fulton Mining Company made application for letters patent of the United States for said J. C. Johnston mining claim, and that letters patent issued therefor to said The Fulton Mining Company, bearing date the 31st day of February, A. D. 1884, but that plaintiff did not learn of the issuance of said letters patent until the — day of February, A. D. 1885.

That upon learning the same plaintiff immediately and on, to wit, the — day of February, A. D. 1885, at Denver, Colorado, made demand upon said Chatfield individually and as general manager and agent of said The Fulton Mining Company, which said
12 Chatfield then and there was and is agent and representative of said association of persons, Chatfield, Thompson, Sayre, Wilson, and Dunscomb, for a conveyance of plaintiff's interest in said property according to plaintiff's said contract with said Chatfield, which demand was then and there refused by said Chatfield.

Plaintiff further says that from time to time after the execution of his said deed and contract to and with said Chatfield, and until plaintiff learned of the issuance of letters patent to the said The Fulton Mining Company as aforesaid, plaintiff frequently inquired of said Chatfield as to the progress that was being made with the proceedings to perfect the title of said J. C. Johnston claim, and that said Chatfield always answered said inquiries by stating that the patent had not been received, but that application had been made therefor, and that everything would be all right; and plaintiff says that he had implicit confidence in said Chatfield, and, knowing also that the issuance of United States patents for mining claims is usually attended with long delays, plaintiff never suspected that anything was wrong until he learned of the issuance of patent and until his demand was refused as aforesaid.

And plaintiff charges and says that no *bona fide* suit or proceeding was ever brought or threatened by the claimants of said Smuggler No. 2 claim, as was represented by said Chatfield and Thompson and Sayre as aforesaid; that the only suit or proceeding ever brought by any claimants of said Smuggler No. 2 claim against said J. C. Johnston claim was commenced in the United States circuit court for the district of Colorado, at Denver, on the 7th day of May,

A. D. 1881; that said action was brought in support of an alleged adverse claim of the Smuggler No. 2 claim against the said
13 J. C. Johnston claim upon the application of the said The Fulton Mining Company as grantee of said Chatfield for letters patent to said J. C. Johnston claim; that a demurrer was filed to the complaint in said cause on the 20th day of July, A. D. 1881, and no further proceedings were had or taken in the same until the 18th day of December, A. D. 1882, when said cause was dismissed by stipulation of the parties thereto, each party paying their own costs; that said dismissal was made, and all proceedings in said cause were taken without the knowledge or consent of plaintiff, and if said cause was compromised it was done without plaintiff's knowledge or consent.

And plaintiff charges and states that such suit was without foundation or merit, but that said Thompson and Sayre caused the same to be brought only that they might appear to defend the same and thereby apparently perform the services for which they were to receive one-eighth share in said J. C. Johnston claim; that the original plaintiffs in said adverse suit in said United States circuit court were Edward F. Brown, Elizabeth A. Acheson, and William C. Osborn, and the original defendants in the same were Edward Dunscomb, I. W. Chatfield, W. J. Wilson, Daniel Sayre, C. I. Thompson, and The Fulton Mining Company, all of which defendants are defendants herein; that by an amended complaint filed in said cause on the 7th day of July, A. D. 1881, Belle R. Seaver and James E. Seaver were added as parties plaintiff and Margaret Dunscomb was made a party defendant in said cause.

That neither said Elizabeth H. Acheson, William C. Osborn, James E. Seaver, nor Belle R. Seaver had any interest of record in said Smuggler No. 2 claim at the time of the commencement of said suit or thereafter, and that none of the parties plaintiff in said
14 cause had any *boda fide* interest or claim in or to the said Smuggler No. 2 claim at said time.

Plaintiff further says that he did not discover the fraud practised upon him by the said Thompson and Sayre by means of said sham and pretended adverses until the — day of April, A. D. 1885, when he was informed of the same by his attorney, L. C. Northrup, who, at plaintiff's request and after plaintiff's demand on said Chatfield and his refusal as aforesaid, investigated and reported the facts in relation thereto as above set forth.

Plaintiff further says that the said defendant, The Fulton Mining Company, appears to have conveyed or attempted to convey said J. C. Johnston claim and premises to the defendant William J. Anderson by mining deed dated July 5th, 1886, and for a stated consideration of one hundred and twenty-five thousand dollars, and that said William J. Anderson appears to have conveyed or attempted to convey the same to the defendant The Standard Mining Company of Kansas City by mining deed bearing date the 17th day of June, 1887, for a stated consideration of two million five hundred thousand dollars; but plaintiff states that each and every one of said defendants, The Fulton Mining Company, William J. Anderson, and The

Standard Mining Company of Kansas City, had full knowledge and actual notice at and before the time of the respective transfers or attempted transfers to them as aforesaid of the plaintiff's interest in said property and of the uses and trusts and conditions upon which said Chatfield took said title from plaintiff and of plaintiff's right and equities in the premises as above shown.

Plaintiff further states and charges that said conveyance or
15 attempted conveyance from the said The Fulton Mining Company to said William J. Anderson and from said Anderson to said The Standard Mining Company of Kansas City were without valuable consideration and were fraudulent and void as to this plaintiff and his said interest in said property, and, further, that said conveyances or attempted conveyances and each thereof were made with special intent and purpose to hinder and defraud this plaintiff.

Plaintiff further says that since the execution of his said deed to said Chatfield, of date October 12th, 1880, the defendants The Fulton Mining Company, William J. Anderson, The Standard Mining Company of Kansas City have mined, extracted, and sold large quantities of valuable ores from said J. C. Johnston mining claim, and also from the so-called Chatfield Lode mining claim, adjoining the said J. C. Johnston mining claim, the exact value and extent of which plaintiff is unable to ascertain or state, and that the defendant The Standard Mining Company of Kansas City is now mining and selling from said J. C. Johnston and Chatfield mines and claims large quantities of valuable ores, the exact amount and value of which plaintiff is unable to ascertain or state.

Plaintiff is informed and believes and so states the fact that the value of the said J. C. Johnston mine and premises is at least the sum of one million dollars.

And plaintiff says that said so-called Chatfield vein or lode is one and the same with said J. C. Johnston vein and is connected therewith by continuous workings; that said Chatfield was located after the location of the said J. C. Johnston vein and wholly within the end lines of said J. C. Johnston claim, as extended in their own direction, and that the apex or the highest point of said vein so located is wholly within the said J. C. Johnston claim.

16 Wherefore plaintiff prays judgment:

1. That the plaintiff be adjudged to be the owner of an undivided one-fourth of and in the said J. C. Johnston mining claim and premises, and that the defendant The Standard Mining Company of Kansas City or the defendant Isaac W. Chatfield, whichever shall be found to be the holder of the legal title of plaintiff's said interest in said mining claims and premises, be decreed to execute a good and sufficient deed thereof to plaintiff within ten days after judgment herein, and in default thereof that the court appointed a commissioner to execute such deed.

2. That the defendants The Fulton Mining Company, William J. Anderson, and The Standard Mining Company of Kansas City and any and all of the stockholders of said companies, when ascertained, account to the plaintiff for all proceeds received by them or any of

them of ores mined and extracted from said J. C. Johnston and Chatfield mines and premises from the 12th day of October, A. D. 1880, until the present time, and for judgment for whatever amount may be found due to the plaintiff upon such accounting according to his interest in said property, and that pending this action said defendant, The Standard Mining Company of Kansas City, be required to account from time to time and pay into this court to abide final judgment in this cause one-fourth of the net proceeds of said J. C. Johnston and Chatfield mines and premises.

3. In case said first and second reliefs for any reason cannot be granted, then for personal judgment against said Chatfield for the value of an undivided one-eighth of said J. C. Johnston mine and premises, to wit, for the sum of one hundred and twenty-five thousand dollars, and against said Thomson and Sayre for the value of an undivided one-eighth of the same, to wit, for the sum of one hundred and twenty-five thousand dollars, and for an accounting by
17 said Chatfield, Thomson, and Sayre of all ores mined, extracted, or sold from the said J. C. Johnston mine from the 12th day of October, 1880, until the present time, and for judgment for whatever amount may be found due to the plaintiff from said Chatfield and from said Thompson and Sayre upon such accounting.

4. That the defendants Thompson and Sayre be required by order of this court to produce for the inspection of plaintiff and his attorneys the original contracts and writings referred to and stated in this complaint as being in their possession, and that thereupon plaintiff be allowed to amend this complaint, if deemed necessary, to conform to said contracts and writings.

5. For such other, further, or different relief as may seem — or proper.

HUGH BUTLER,
WILSON & STIMSON,
Attorneys for Plaintiff.

And on the said 21st day of October, A. D. 1887, the clerk of this court issued out of and under the seal of this court a summons in the above-entitled cause; which said summons was delivered to the sheriff of Pitkin county, Colorado, to execute. Said sheriff on, to wit, the 27th day of October, A. D. 1887, returned said summons into court with his return indorsed thereon; which summons and return are in words and figures as follows:

18 STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

JOHN C. JOHNSTON, Plaintiff,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, Isaac W. Chatfield, Charles I. Thompson, Daniel Sayre, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants. } Summons.

The people of the State of Colorado to the defendants above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the ninth judicial district within and for Pitkin county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county, or if served out of this county or by publication within forty days after the service hereof, exclusive of the day of service, or judgment by default will be taken against you according to the prayer of the complaint.

If a copy of the complaint in said cause be not served herewith, or if the service hereof be by publication, in such case you are allowed ten days additional to the time above mentioned for your appearance and answer herein.

The nature of said action is as follows:

19 Plaintiff alleges that on the 12th day of October, 1880, he deeded to the defendant I. W. Chatfield an undivided one-fourth (¼) interest of the Johnston Lode mining claim, situate on Smuggler mountain, in Roaring Fork mining district, then Gunnison, now Pitkin, county, Colorado, in trust as follows: Said I. W. Chatfield agreed to perfect the title of said J. C. Johnson claim and thereupon reconvey to plaintiff an undivided one-eighth (⅛) interest of said claim and premises, and on the further trust that said I. W. Chatfield should hold the remaining one-eighth interest deeded to him as aforesaid for the defendants, Thompson and Sayre, for their services in defending a certain adverse suit then pending or threatened by the claimants of the Smuggler No. 2 mining claim in case such services should be required, and if not required said I. W. Chatfield should reconvey said remaining one-eighth interest to plaintiff.

That said I. W. Chatfield and defendant The Fulton Mining Company, as grantee of said I. W. Chatfield, perfected said J. C. Johnston title by obtaining United States patent therefor; that no *bona fide* suit was brought by claimants of said Smuggler No. 2 lode, and that the services of said Thompson and Sayre were not required to defend such; that defendant I. W. Chatfield and his grantees have failed and refused to reconvey to plaintiff said one-fourth (¼) interest

in said J. C. Johnston claim or any part thereof; that each and every of the defendants had actual notice of said trust and plaintiff's rights thereunder at and before they became purchasers of said premises.

The relief demanded in said action is:

1st. That plaintiff be adjudged the owner of an undivided one-fourth ($\frac{1}{4}$) interest in said J. C. Johnston mine and premises, and that said I. W. Chatfield or said Standard Mining Company, holding the legal title thereof, be required to execute a deed of said one-fourth ($\frac{1}{4}$) interest to plaintiff.

2nd. For an accounting of all ores sold or mined from said premises from October 12th, 1880, to the present time.

3rd. In case for any reason said first relief cannot be granted for personal judgment against said I. W. Chatfield for the value of one-eighth ($\frac{1}{8}$) of said premises, viz., $125,000, and against said Thompson and Sayre for the value of one-eighth ($\frac{1}{8}$) thereof, viz., $125,000, and for an accounting.

4th. That said Thompson and Sayre be required to produce for plaintiff's inspection certain contracts and writings in their possession declaring said trust.

For such other and further relief as may be proper.

All of which more fully appears in the complaint in said cause which is filed in said district court in Pitkin county, Colorado.

Given under my hand and official seal this 21st day of October, A. D. 1887.

[SEAL.] JOHN M. BEACH,
Clerk District Court.

STATE OF COLORADO, }
County of Pitkin, } *ss:*

I do hereby certify that I have duly executed the within, 27th day of October, A. D. 1887, by personally leaving a true copy of the within summons with Brown, superintendent, a general manager of the Standard Mining Company then; afterwards, to wit, on 9th day of November, A. D. 1887, by personally leaving a true copy of the within summons with I. W. Chatfield, at the city of Aspen, county and State aforesaid; then after diligent search I have been unable to find any of the rest of the defendants in my county.

J. D. HOOPER, *Sheriff,*
By J. T. STEWART,
Under Sheriff.

Endorsed: No. 535. In district court. J. C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Summons. Filed Nov. 11th, 1887. John M. Beach, clerk.

And on the said 29th day of October, A. D. 1887, the clerk of this court issued out of and under the seal of this court a summons in the above-entitled cause; which said summons was delivered to the sheriff of Arapahoe county, Colorado, to execute. Said sheriff, on, to

wit, the 11th day of November, A. D. 1887, returned said summons into court with his return endorsed thereon, which summons and return are in words and figures as follows:

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

JOHN C. JOHNSTON, Plaintiff,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, Isaac W. Chatfield, Charles I. Thompson, Daniel Sayre, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants. } Summons.

22 The people of the State of Colorado to the defendants above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the ninth judicial district within and for Pitkin county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county, or if served out of this county or by publication within forty days after the service hereof, exclusive of the day of service, or judgment by default will be taken against you according to the prayer of the complaint.

If a copy of the complaint in said cause be not served therewith or if the service hereof be by publication, in such case you are allowed ten days additional to the time above mentioned for your appearance and answer herein. The nature of said action is as follows:

Plaintiff alleges that on the 12th day of October, 1880, he deeded to the defendant I. W. Chatfield an undivided one-fourth (¼) interest of the J. C. Johnston Lode mining claim, situate on Smuggler mountain, in Roaring Forks mining district, then Gunnison, now Pitkin, county, Colorado, in trust as follows: Said I. W. Chatfield agreed to perfect the title of said J. C. Johnston claim and thereupon reconvey to plaintiff an undivided one-eighth (⅛) interest of said claim and premises and in the further trust that said
23 I. W. Chatfield should hold the remaining one-eighth interest deeded to him as aforesaid for the defendants Thompson and Sayre for their services in defending a certain adverse suit then pending or threatened by the claimant of the Smuggler No. 2 mining claim, in case such services should be required, and if not required said I. W. Chatfield should reconvey said remaining one-eighth interest to plaintiff.

That said I. W. Chatfield and defendant The Fulton Mining Company, as grantee of said I. W. Chatfield, perfected said J. C. Johnston title by obtaining United States patent therefor; that no

bona fide suit was brought by claimants of said Smuggler No. 2, and that the services of said Thompson and Sayre were not required to defend such suit.

That defendant I. W. Chatfield and his grantees have failed and refused to reconvey to plaintiff said one-fourth (¼) interest in said J. C. Johnston claim or any part thereof; that each and every of the defendants had actual notice of said trust and plaintiff's rights thereunder at and before they became purchasers of said premises. The relief demanded in said action is:

1st. That plaintiff be adjudged the owner of an undivided one-fourth (¼) interest in said J. C. Johnston mine and premises, and that said I. W. Chatfield or said Standard Mining Company, holding the legal title thereof, be required to execute a deed of said one-fourth (¼) interest to plaintiff.

2nd. For an accounting of all ores sold or mined from said premises from October 12th, 1880, to the present time.

3rd. In case for any reason said first relief cannot be granted for personal judgment against said I. W. Chatfield for the value of one-eighth (⅛) of said premises, viz., $125,000, and against said
24 Thompson and Sayre for the value of one-eighth (⅛) thereof, viz., $125,000, and for an accounting.

4th. That said Thompson and Sayre be required to produce for plaintiff's inspection certain contracts and writings in their possession declaring said trust.

5th. For such other and further relief as may be proper.

All of which more fully appears in the complaint in said cause which is filed in said district court in Pitkin county, Colorado.

Given under my hand and official seal this 29th day of October, A. D. 1887.

[SEAL.] JOHN M. BEACH,
Clerk District Court.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

I hereby certify that I have served this summons this 11th day of November, A. D. 1887, by delivering a copy thereof to Mrs. William J. Wilson, wife of defendant William J. Wilson, at the usual place of abode of said defendant in Denver, county and State aforesaid, she, the said Mrs. William J. Wilson, being a member of defendants' family over 15 years of age.

FREDERICK CRAMER, *Sheriff,*
By J. M. CHIVINGTON,
Under Sheriff.

Endorsed: No. 535. In district court. J. C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Summons. Filed November 12th. 1887. John M. Beach, clerk. Wilson & Stimson, att'ys for pl'ffs.

25 And on the 21st day of November, A. D. 1887, came defendants, by Messrs. Charles I. Thompson and Strickland

Salmon & O'Brien, their attorneys, and filed herein their certain petition for removal, which is in words and figures as follows:

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

JOHN C. JOHNSTON, Plaintiff,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, ISAAC W. Chatfield, Charles I. Thompson, Daniel Sayre, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants.

Petition for Removal to the Circuit Court of the United States, District of Colorado.

To said district court:

Your petitioner, The Standard Mining Company of Kansas City, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of interest and costs, the sum and value of two thousand dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a corporation organized under the laws of the State of Missouri and a citizen of the State of Missouri, and that the plaintiff J. C. Johnston was then and still is a citizen of the State of Colorado; that the time before which this defend-
26 ant, your petitioner, is required by the laws of the said State of Colorado or any rule of this honorable court to answer or plead to the complaint of the said plaintiff, John C. Johnston, has not yet expired.

Your petitioner states that in the suit above mentioned there is a controversy which is wholly between citizens of different States and which can be fully determined as between them, to wit, a controversy between the said petitioner, The Standard Mining Company of Kansas City, and the said plaintiff, John C. Johnston.

And your petitioner offers herewith a bond with good and sufficient surety for its entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further herein except to make an order of removal required by law and to accept said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the district of Colorado; and your petitioner will ever pray, &c.

CHARLES I. THOMPSON.

STRICKLAND, SALMON & O'BRIEN,
Attorneys for Petitioner.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Wm. O'Brien, being duly sworn, — that I am one of the attorneys for the petitioner in the above-entitled cause: that I have read the foregoing petition and know the contents thereof, and
27 that the statements and allegation therein contained are true, as I verily believe.

WILLIAM O'BRIEN.

Subscribed by the said William O'Brien in my presence and by him sworn to before me this 21st day of November, A. D. 1887.

[SEAL.] WM. McMURCHEY,
Notary Public.

Endorsed: No. 535. In district court. John C. Johnston *vs.* The Standard Mining — of Kansas City *et al.* Petition for removal. Filed Nov. 21st, 1887. John M. Beach, clerk.

And afterward and on the said 21st day of November, A. D. 1887, the defendants, by Messrs. Strickland, Salmon and O'Brien, their attorneys, filed herein their certain bond for removal, which is in words and figures as follows:

Know all men by these presents that I, the Standard Mining Company, as principal, and John B. Wardell, as surety, are held and firmly bound unto John C. Johnston in the penal sum of five hundred dollars; — the payment whereof, well and truly to be made unto the said John C. Johnston, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Standard Mining Company of Kansas City, having petitioned the *the* district court of Pitkin county, State of Colorado, for the removal of a cdrtain cause therein pending, wherein John C. Johnston is plaintiff and The Standard Mining Company of Kansas City and others are defendants, to the circuit court of the United States in and for the district of Colorado.

27½ Now, if the said Standard Mining Company of Kansas City, your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this — day of November, A. D. 1887.

THE STANDARD MINING COMPANY
OF KANSAS CITY, [SEAL.]
By EDWARD F. BROWN, *M'g'r.* [SEAL.]
JOHN B. WARDELL. [SEAL.]

STATE OF COLORADO, } ss:
County of Pitkin, }

John B. Wardell, being duly sworn, on oath says that he is a resident of the county of Pitkin, State of Colorado, and that he has property in the said county and State of the value of $500.00 dollars over and above his just debts and liabilities, and free and clear of all incumbrances and not subject to exemptions from execution under the laws of Colorado.

JOHN B. WARDELL.

Subscribed and sworn to this 21st day of November, 1887.

[SEAL]. WM. McMURCHEY,
Notary Public.

On this 21st day of November, A. D. 1887, a certain order of court for the removal of the above-entitled cause was made and entered of record herein, which is in words and figures as follows:

28 JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY *et al.* } No. 535.

On this day comes the defendant The Standard Mining Company, by Charles I. Thompson & Strickland, Salmon & O'Brien, its attorneys, and presents here to the court its petition and bond for removal of this case to the circuit court of the United States in and for the district of Colorado.

And thereupon the court, having duly examined such petition and bond and being now sufficiently advised therein, doth order that this case be, and the same is hereby, removed to the circuit court of the United States in and for the district of Colorado.

And let the clerk, upon payment to him of all costs remaining due and unpaid in this action, together with the costs of transcript, make a complete and correct copy of all papers filed herein, together with all proceedings had and entered of record herein in this action, and certify the same with all convenient speed to said United States circuit court, at the city of Denver, State of Colorado.

(Signed) THOMAS A. RUCKER, *Judge.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, John M. Beach, clerk of the district court of Pitkin county, Colorado, do hereby certify that the above and foregoing writing is a full, true, and correct copy of the papers filed and of the proceedings had in a certain cause lately pending in said district court, wherein John C. Johnston was plaintiff and The Standard Mining Co. of Kansas City *et al.* were defendants, docket No. 535.

29 In testimony whereof I have hereunto set my hand and affixed the seal of said district court of Aspen, in said county and State, this 28th day of November, A. D. 1887.

[SEAL.] JOHN M. BEACH,
Clerk Dist. Court.

Bill of Costs.

Plaintiff's costs	$34 80
Defendants' costs	22 45
Sheriff's fees	7 00
Total	$64 25

Credits.

Plaintiff, by docket fee	$5 00
Defendant, by balance costs	59 25
	$64 25

Endorsed: No. 2244. John C. Johnston, plaintiff, *vs.* The Standard Mining Company of Kansas City *et al.*, defendants. Transcript of record from district court of Pitkin county. Filed Jan. 31, 1888. William A. Willard, clerk. Wilson & Stimson & Hugh Butler, att'ys for pl'ff. Strickland, Salmon & O'Brien & C. I. Thompson, att'ys for def'ts.

And afterwards and on, to wit, the 8th day of March, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

30 *Order. Motion to Remand Denied.*

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY *et al.* } 2244. In Chancery.

Bill for a deed and for other relief.

At this day comes the said complainant, by Hugh Butler, Esq.' his solicitor, and the said defendants, by C. I. Thompson, Esq., their solicitor, also come.

And the motion of the said complainant to remand this cause to the district court of Pitkin county, from whence it came, having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

And afterwards and on, to wit, the 5th day of March, A. D. 1888, came the said defendant, The Standard Mining Company of Kansas City, by C. I. Thompson, Esq., and C. J. Hughes, Esq., its solicitors, and filed in said court and in said cause its answer to the bill of complaint heretofore filed herein, and the said answer is in words and figures as follows, to wit:

Answer of Standard Mining Company.

31 UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States, Sitting in and for said District.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, ISAAC W. Chatfield, Charles I. Thompson, Daniel Sayre, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants.

The separate answer of The Standard Mining Company of Kansas City, one of the defendants, to the bill of complaint of John C. Johnston, complainant.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, answering, says that it is true and it admits that it is a corporation, and that the Fulton Mining Company is a corporation, as set forth in said bill; but this defendant denies that on the 14th day of September, A. D. 1880, or at any other time, the said complainant was the owner of an undivided one-half of the J. C. Johnston Lode mining claim, situate in Roaring Fork mining district, Pitkin, then Gunnison, county, Colorado, and particularly described in said bill, and denies that said complainant was ever the owner of any portion of said J. C. Johnston lode in excess of the one undivided one-fourth thereof.

32 This defendant admits that a purported and pretended location certificate of said mining claim was made and filed for record, as in said bill set forth, and admits that on the 14th day of September, 1880, the complainant executed a certain title bond whereby he agreed to sell and convey to the defendant Isaac W. Chatfield an undivided one-fourth share and interest in said J. C. Johnston mining claim, with other property, for a consideration of twelve hundred dollars; which said title bond is in the words and figures following, to wit:

"Know all men by these presents that I, John C. Johnston, of the county of Arapahoe and State of Colorado, am held and firmly bound unto Isaac W. Chatfield, of Lake county, Colorado, in the penal sum of five thousand dollars, lawful money of the United States; for the payment of which sum, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Witness my hand and seal this 14th day of September, A. D. 1880.

The conditions of the above obligation are such that whereas the above-bounden John C. Johnston has on the day of the date hereof sold to the said Isaac W. Chatfield the following-described property lying, being, and situate in the county of Gunnison and State of Colorado, to wit, one undivided one-quarter of the J. C. Johnston lode, in Roaring Fork district, in said county; also one undivided one-half of my interest in the following lodes, to wit, the Kansas City lode, the Combination lode, the John Lilly lode, and the J. C. lodes, situate in said county and district; also the undivided half of my interest in the Smuggler 2 lode, in said county and district, for the sum of $1,200, lawful money, which sum of
33 money is to be paid to the said J. C. Johnston as follows: $100 cash, team at $350; the balance in monthly payments of $100 payments, except the last payment, which shall be $150, and, upon the payment of all of said money so to be paid as hereinbefore mentioned, make, execute, acknowledge, and deliver unto the said Isaac W. Chatfield or to such person or persons as he shall designate a good and sufficient deed or deeds of all the foregoing property showing a clear and perfect title free from all incumbrance except as against the United States: Now, if the said Isaac W. Chatfield shall fail to pay said sums of money at the times aforesaid and if the said John C. Johnston shall well and faithfully perform the covenants herein, then this obligation to be null and void; otherwise to be and remain in full force and effect.

(Sig.) JOHN C. JOHNSTON. [SEAL.]

This defendant admits that on the 12th day of October, 1880, at Leadville, Colorado, said complainant executed to said Chatfield a deed of all of said complainant's interest in said J. C. Johnston mining claim for the consideration of $1,200; but this defendant denies that said complainant's interest in said mining claim at the time of the execution of said deed was or ever was an undivided one-half or any portion of said claim in excess of an undivided one-fourth thereof; and this defendant denies that said conveyance was as to any portion of said claim in pursuance of said title bond, or that said conveyance was as to any portion of said claim in trust for any uses or trusts whatsoever.

34 This defendant denies that it was ever represented to said complainant by said Chatfield or by the defendant Charles I. Thompson or the defendant Daniel Sayre that any mining claim whatsoever was in conflict with said J. C. Johnston mining claim, or that any of the claimants of any mining claim had commenced or were about to commence any legal or other proceedings to enforce any claim or title of any kind to any property, or that said Chatfield ever represented that because of any adverse claims or title he could not or would not take up said title bond or option or pay $1,200 unless said complainant would employ counsel to defend such suit or threatened suit, and denies that any such representa-

tions as are alleged in said bill were ever made or any such conversation or conversations ever had.

This defendant admits that early in the year 1880 said complainant entered into a grub-stake contract with J. C. Acheson, Edward Dunscomb, and James B. Seaver whereby said complainant agreed to prospect for and locate mines and mining claims upon the public domain of the United States for and on behalf of said complainant and said Acheson, Dunscomb, and Seaver jointly; but this defendant denies that in consideration thereof said Acheson, Dunscomb, and Seaver agreed to furnish or pay to complainant all supplies or expenses which should be required by complainant in prospecting for or locating or developing mining claims aforesaid, but that said Acheson, Dunscomb, and Seaver did agree in said instrument to pay to the complainant in consideration of his services aforesaid certain sums of money as hereinafter set forth and not otherwise.

This defendant admits that in pursuance of said agreement and on or about the 9th day of June, A. D. 1880, said complainant located a mining claim and called the same the Smuggler
35 No. 2 mining claim, and that said location was in the joint names of said complainant, claiming one-fourth, and of Margaret Dunscomb, wife of said Edward Dunscomb, and Belle R. Seaver, wife of said James E. Seaver, each claiming three-eighths.

This defendant admits that after said location said complainant continued to work and develop the ground covered by said claim, but this defendant denies that said Acheson, Dunscomb, and Seaver and their said wives, Margaret and Belle, or any or either of them ever abandoned said mining claim or location or ever refused or failed to pay or furnish to complainant any money or thing which by said agreement they or any of them were bound to pay or furnish, and denies that said complainant continued as aforesaid to work or develop said ground at his own expense.

This defendant admits that said complainant attempted and pretended to locate said Smuggler No. 2 mining claim as the J. C. Johnson mining claim as set forth in said bill, and that such pretended location was made in the names of said complainant, claiming an undivided one-half, and of G. A. Critenden and J. W. Adair, each claiming an undivided one-fourth.

This defendant admits that the said J. C. Acheson, in behalf of himself and said Dunscomb and Seaver and their said wives, procured a deed from said Critenden and Adair for their apparent interests in said J. C. Johnston claim, but it denies that said interest was purchased for the consideration of one thousand dollars or any consideration in money or property, and this defendant denies that said Acheson, Dunscomb, and Seaver and their said wives or either or any of them or any person for them or either or any of them ever negotiated with said complainant for or
36 agreed to purchase from him any interest in said J. C. Johnston claim, and this defendant avers that they always demanded and claimed all of said J. C. Johnston claim and the ground embraced therein except the undivided one-fourth thereof which belonged to said complainant under said agreement. This defendant

denies that any of the alleged facts as set forth in said bill respecting the location of the said Smuggler No. 2 or the J. C. Johnston claim or any negotiations of said Acheson, Dunscomb, and Seaver for the purchase from complainant of any interest in said J. C. Johnston claim were well or at all known to said Chatfield, Thompson, and Sayer or any or either of them or were in anywise communicated to them or any of them by complainant or any other person.

This defendant denies that said Chatfield, Thompson, and Sayer or any or either of them ever insisted or intimated to complainant or any other person that there were any parties who as grantees of said Margaret Dunscomb and Belle R. Seaver or otherwise claimed in any way adversely to any interest of complainant in said J. C. Johnston claim, or that any legal or other proceedings had been or were about to be commenced to enforce any claim of title.

This defendant denies that said Chatfield, Thompson, and Sayer or any or either of them represented that it was desirable to perfect the title of said J. C. Johnston mining claim by applying for or obtaining letters patent therefor from the United States of America or otherwise, or that it was best to have all the title in one person who could then make application for patent, or that they had secured or would secure a conveyance from the owners of the other one-half of said J. C. Johnston claim; and this defendant avers that no such conversation ever took place between said Chatfield, Thompson, and Sayer or any or either of them and said complainant.

37

This defendant denies that said Chatfield, Thompson, and Sayer or any or either of them ever represented to complainant that they proposed to organize a stock company, or that they had secured or would secure the other half interest in said J. C. Johnston claim; and denies that the defendants Chatfield, Thompson, Sayer, Wilson, Dunscomb, or any of them were associated together or had agreed with each other or with anybody else to organize a stock company for any purpose, or that said Chatfield ever was the agent or representative or acting in behalf of said persons.

This defendant admits that the defendant The Fulton Mining Company was incorporated by the defendants Chatfield, Thomson, Sayer, Wilson, and Dunscomb, but denies that it was incorporated on the 22nd day of December, 1880.

This defendant denies that said Chatfield, Thompson, and Sayer or any or either of them ever at any time or any place agreed or represented that if complainant would convey any interest in said property to said Chatfield said Thomson and Sayer would defend said J. C. Johnston title against said Smuggler No. 2 claim, or that said Chatfield would protect said J. C. Johnston title by applying for or obtaining letters patent therefor, or would convey or cause to be conveyed to complainant any interests in said J. C. Johnston property or would hold any interest in said J. C. Johnston title, for said Thomson and Sayer to pay for any legal services or for any purpose, or that if any services should not be necessary or should not be performed any interest should be reconveyed to complainant.

38 This defendant denies that at the solicitation of said Chatfield, Thomson, and Sayer or either or any of them, or at the solicitation of any person or at any solicitation whatsoever, or having full or any faith in any representations whatsoever, said complainant was induced to or ever did employ said Thomson and Sayer on any terms or for any purpose whatsoever, or that by reason of such solicitations or representations complainant executed any deed conveying to any person any interest in any property whatsoever.

This defendant admits that a contract in writing was drawn up and signed by said Chatfield and complainant whereby, upon certain conditions therein set forth, said Chatfield agreed to convey to plaintiff an undivided one-eighth interest in said J. C. Johnston claim; but this defendant denies that said contract was drawn up in pursuance of any such agreement as is alleged in said bill, or that said contract provided for any conveyance of said interest free and clear of all expenses relating to said J. C. Johnston mining claim.

Said contract is hereinafter fully set forth.

This defendant denies that any other contract in writing was ever drawn up or executed between said Chatfield and said Thomson and Sayer declaring any trust upon which said Chatfield held any interest for said Thomson and Sayer, and denies that there ever was any such trust, or that said Chatfield ever did hold any interest of any kind for said Thomson and Sayer.

This defendant avers that no such pretended writing was ever left with said Thomson and Sayer, or is now or ever was in their possession.

39 This defendant admits that the first-mentioned contract was left with said Thomson and Sayer, but denies that they ever promised to have the same recorded anywhere; and defendant avers that at the request of complainant a true copy thereof was furnished him by said Thomson and Sayer.

This defendant admits that on or about the 14th day of September, A. D. 1880, the defendant Chatfield attempted to and did convey to the defendant The Fulton Mining Company all the right, title, and interest of said Chatfield in and to said J. C. Johnston mining claim, but this defendant denies that said conveyance was before the incorporation of said Fulton Mining Company, and denies that said company was not incorporated until the 22d day of December, 1880; and denies that said The Fulton Mining Company acquired no title by said conveyance.

Denies that said complainant had any equitable title in said J. C. Johnston claim for it to acquire.

This defendant denies that the defendant The Fulton Mining Company had full or any knowledge or notice, actual or otherwise, of any uses, trusts, or conditions upon which said Chatfield held the said J. C. Johnston title as aforesaid, and denies that there were any uses, trusts, or conditions upon which said Chatfield held said title.

This defendant, further answering, says it may be true for anything this defendant knows to the contrary that said complainant made demand upon said Chatfield for a conveyance of some interest

in said property, and that from time to time after the execution of said deed and contract to and with said Chatfield and
40 until he learned of the issuance of letters patent to said The Fulton Mining Company he frequently inquired of said Chatfield as to the progress that was being made with the proceedings to perfect the title of said J. C. Johnston claim, and that said Chatfield always answered said inquiries by stating that the patent had not been received, but that application had been made therefor, and that everything would be all right, but this defendant is an utter stranger to all and every such matters and cannot form any belief concerning the same; but this defendant denies that said Chatfield at the time or times mentioned in said bill was or ever was the general manager or agent of said The Fulton Mining Company or the agent or representative of said Thomson, Sayer, Wilson, and Dunscomb, or any or either of them, and denies that complainant ever suspected that anything was wrong in relation to said claim or any matter pertaining thereto, but this defendant avers that said complainant at all times knew that nothing was wrong in relation to said claim and the actions of said persons in regard thereto.

This defendant denies that no *bona fide* suit or proceeding was ever brought or threatened by the claimants of said Smuggler No. 2 claim; denies that the only suit or proceeding ever brought by any of the claimants of said Smuggler No. 2 claim against the said J. C. Johnston claim was commenced in the United States circuit court for the district of Colorado on the 7th day of May, 1881.

This defendant admits that said cause was dismissed as set forth in said bill, and admits that said dismissal was made and all proceedings in said cause were taken without the knowledge or consent of complainant, but this defendant denies that said suit was
41 without foundation or merit, or that any person or persons caused the same to be brought, or that the same was brought only that said Thomson and Sayer might appear to defend the same or thereby perform the services for which they were to receive one-eighth share in the said J. C. Johnston claim; and denies that either said Elizabeth H. Acheson, William C. Osborne, James E. Seaver, or Belle R. Seaver had no interest in said Smuggler No. 2 claim at the time of the commencement of the suit, or that no one of the parties in said suit had any *bona fide* interest in said Smuggler No. 2 claim at said time.

This defendant admits that said complainant did not discover any fraud practised upon him by the said Thomson and Sayer, as averred in said bill.

And this defendant avers that said complainant never has discovered any such fraud, for the reason that no fraud of any kind was ever practiced upon said complainant by said Thomson and Sayer or any other party connected with said J. C. Johnston or Smuggler No. 2 mining claim.

This defendant denies that the defendants The Fulton Mining Company, William J. Anderson, and The Standard Mining Company, or any or either of them, ever had any knowledge or notice of any kind of any interest of said complainant in said property or

of any uses, trusts, or conditions upon which said Chatfield took the said title from said complainant as aforesaid, and denies that there were any such uses, trusts, or conditions.

This defendant denies that the conveyance- from the Fulton Mining Company to said William J. Anderson and from said Anderson to said The Standard Mining Company of Kansas City, or
42 either of them, were without valuable consideration, or that they were fraudulent or void as to said complainant or any other person or as to the interests of said complainant or any other person, or that said conveyances or any of them were made with any intent or purpose to hinder or delay any person.

This defendant denies that since the execution of said deed to said Chatfield the defendants The Fulton Mining Company, William J. Anderson or The Standard Mining Company of Kansas City have mined or extracted or sold large quantities of valuable ores from said J. C. Johnston mining claim or from the Chatfield lode or mining claim adjoining the said J. C. Johnston mining claim, or that they have sold any quantities of such ores in excess of the amount laid out and expended in the development of said claim, and denies that the defendant The Standard Mining Company of Kansas City is now mining or selling from said J. C. Johnston and Chatfield mines and claims any quantity of ores, valuable or otherwise, in excess of the cost of production thereof.

This defendant denies that the value of the said J. C. Johnston mine and premises is the sum of one million dollars, or that the said Chatfield vein or lode is one and the same as the said J. C. Johnston vein or is connected therewith by continuous or other workings, or that the apex or highest point of said vein so located is wholly within the said J. C. Johnston claim.

And, further answering the said complainant's said bill, this defendant saith that on the 7th day of February, A. D. 1880, said complainant entered into a contract with J. C. Johnston, James E. Seaver, and Edward Dunscomb, whereby said complainant agreed to pros-
43 pect for and locate mines and mining claims upon the public domain of the United States during the year 1880 for an- on behalf of said complainant and said Acheson, Dunscomb, and Seaver jointly, and that when such claims should be so located one-fourth of the same should be located in the name of said complainant and the residue thereof in such names as the said Acheson, Dunscomb, and Seaver might direct, in consideration of which the said Acheson, Dunscomb, and Seaver agreed to pay to said complainant certain sums of money mentioned in said contract and at the times therein mentioned; that in pursuance of the terms and provisions of said contract said complainant on or about the ninth day of June, A. D. 1880, duly located a mining claim in Roaring Fork mining district, Gunnison (now Pitkin) county, Colorado, and called and named the same the Smuggler No. 2 Lode mining claim, which said location was in pursuance of said contract made in the name of said complainant, claiming one-fourth, and by the direction of said Acheson, Dunscomb, and Seaver in the names of Margaret Dunscomb and Belle R. Seaver, each claiming three-eighths; that thereupon, in

pursuance of such location and in pursuance of said contract, said complainant caused to be executed in due form by himself and the said Margaret Dunscomb and Belle R. Seaver a certificate of location of said Smuggler No. 2 claim, and afterwards and within three months after the discovery of said Smuggler No. 2 lode, to wit, on the 9th day of July, A. D. 1880, caused said location certificate to be duly recorded in the office of the clerk and recorder of said Gunnison county, from which location certificate it appears that said complainant was the owner of an undivided one-fourth and the said Margaret Dunscomb and Belle R. Seaver were the owners each of an undivided three-eighths of said claim.

44 This defendant, further answering, says that it does not know whether or not prior to such location any vein or lode had been discovered within the surface boundaries of such Smuggler No. 2 claim, but it avers on information and belief that such discovery has been made.

This defendant further says that none of the other parties to said contract and neither of the other locators of said claims and whose names are subscribed to said location certificate were present when said location was made or personally knew whether or not a discovery of such vein or lode had been made, but, having full confidence in the good faith, integrity, ability, and experience of said complainant and relying on the representations to that effect made by him, they believed that such discovery had been made; that said Acheson, Seaver, and Dunscomb paid to said complainant all the moneys which by said contract they were required to pay; that said complainant, after said location of said Smuggler No. 2 claim and while said contract was in full force, continued to work upon and develop said claim and, contriving to cheat and defraud his said co-locators of their entire interest in the said lode and the ground embraced within the surface boundaries of said Smuggler No. 2 location, and knowing that his co-locators had no personal knowledge as to whether prior to said location he had discovered a vein or lode within the surface boundaries thereof or as to whether such location was otherwise made in accordance with law, entered into a conspiracy with G. A. Crittended and J. W. Adair whereby he agreed with them that in consideration of certain moneys paid by them to him he would make a new location of the ground

45 embraced in said Smuggler No. 2 claim, calling said new location the J. C. Johnston lode mining claim, locating the one undivided half thereof in the name of said complainant and the residue thereof in the names of said Crittenden and Adair, using the aforesaid work and development done by said complainant on said Smuggler No. 2 claim for that purpose, and it was further agreed between said complainant and said Crittenden and Adair that for the purpose of furthering the said fraudulent scheme and insuring the success thereof they would give out and proclaim that no lode or vein had been discovered within said Smuggler No. 2 claim prior to the location thereof, but that a vein of rock in place bearing silver and other valuable deposits had been discovered in the aforesaid workings and development done as aforesaid by said

complainant on said Smuggler No. 2 claim, on which workings and development said J. C. Johnston location should be made prior to making such location, and that by reason of said matters and things said Smuggler No. 2 location was invalid and vested no title to said claim in any of the locators thereof, and that said J. C. Johnston location when made was a valid and legal location and vested good title thereto in the locators.

That thereupon, in pursuance of said corrupt and fraudulent agreement, said complainant caused said new location to be made embracing therein the exact ground contained in said Smuggler No. 2 claim, calling the same the J. C. Johnston claim, and on the 31st day of September, 1880, caused said last-named location to be recorded in the office of the clerk and recorder of said Gunnison county, which said location was made, one-half in the name of the said complainant and the residue in the names of Crittenden and Adair.

46 And in further pursuance of said fraudulent and corrupt agreement said parties thereto thereupon proceeded to give out and proclaim as aforesaid that said Smuggler No. 2 location was invalid, and that said J. C. Johnston location was valid.

That all the work and development aforesaid was done and said J. C. Johnston location made and recorded as aforesaid while the aforesaid agreement between said complainant and said Acheson, Dunscomb, and Seaver was in full force and long before the time limited therein had expired; that neither said Acheson, Dunscomb, or Seaver or said Margaret Dunscomb or Belle R. Seaver had any notice or knowledge of said location of said J. C. Johnston claim until after the same was made and recorded as aforesaid.

That afterwards, on the 12th day of October, A. D. 1880, said complainant, for the consideration of 1,200 dollars paid to him by the defendant Chatfield, by his quitclaim deed of that date conveyed to said Chatfield all his right, title, and interest in and to said J. C. Johnston mining claim; that at the time of such purchase by said Chatfield and said conveyance to him by said complainant said complainant represented to said Chatfield that said J. C. Johnston claim was located in conflict with said Smuggler No. 2 claim, but that said Smuggler No. 2 claim was invalid, no rock in place bearing valuable mineral having been discovered therein prior to its location or at any time, but that said J. C. Johnston location was made upon a discovery of a vein of such rock in place within its surface boundaries prior to its said location, and was therefore a valid and legal location; but said complainant did not inform said Chatfield nor did said Chatfield at said time or until long afterwards have any knowledge of the relations existing as afore-

47 said between said complainant and said Acheson, Dunscomb, and Seaver and said Margaret Dunscomb and Belle R. Seaver or of the agreement aforesaid between said complainant and said Acheson, Dunscomb, and Seaver; that at said time said complainant represented to said Chatfield that the claimants of said Smuggler No. 2 claim would not yield their pretensions thereto without a lawsuit; that he, the said complainant, knew the witnesses from whom the evi-

dence necessary to sustain the said J. C. Johnston location as against the said Smuggler No. 2 location could be obtained, and that he could be of material assistance to said Chatfield in procuring such evidence, and agreed that he would do so if said Chatfield would procure a conveyance from said Crittenden and Adair of their interest in said J. C. Johnston claim, and in case he should prevail in his expected litigation with the claimants of said Smuggler No. 2 location *if* he would convey to said complainant an undivided one-eighth of said J. C. Johnston claim free from any expense of such litigation, in which case said complainant agreed to pay one-eighth of all moneys expended or which might be expended by said Chatfield or his grantees in the working or development of said J. C. Johnston claim.

That prior to the execution of said deed, to wit, on or about the 10th day of August, 1880, said Crittenden and Adair had executed a deed of conveyance whereby they had conveyed to the said J. C. Acheson all their right, title, and interest in and to the said J. C. Johnston mining claim, but that at the time of the execution of said deed from said complainant to said Chatfield no record had been made of said deed to said Acheson and the said Chatfield had
48 not been informed and knew nothing whatsoever thereof; that said Chatfield, relying upon the aforesaid representations and agreements of said complainant and knowing nothing whatsoever of said deed from said Crittenden and Adair to said Acheson, and supposing that the only litigation in which said J. C. Johnston claim could be involved would be said suit against said Smuggler No. 2 claim to try and determine the title to the ground in conflict between said claims, entered into a contract in writing with the said complainant; which said contract is in the words and figures following, to wit:

"Memorandum of an agreement made and entered into this 12th day of October, A. D. 1880, by and between I. W. Chatfield of the city of Leadville, county of Lake, and State of Colorada, party of the first part, and J. C. Johnston of the same place party of the second part, witnesseth,

The party of the first part for and in consideration of the sum of one dollar to him in hand paid and for other good and valuable considerations to him moving from the party of the second part, doth hereby covenant and agree to and with the said party of the second part that in the event of the party of the first part prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part against other persons who claim adversely to him an interest in the following-described property, to wit: The lode, lead and mineral deposit known as and called the J. C. Johnston lode, situate, lying and being in the Roaring Fork mining district, Gunnison county, State of Colorado, that the party of the first part upon so acquiring the title to the said mine by
49 means of the legal proceedings so about to be commenced doth hereby covenant and agree to and with the said party of the second part to convey to the said party of the second part an

undivided one-eighth interest in and to the said described lode, which shall be free and clear from all expenses incidental to the litigation incident to said contemplated suit; and the party of the second part for and in consideration of the covenants and agreements to be kept and performed as hereinbefore mentioned, doth covenant and agree to and with the party of the first part upon having or receiving the title to an undivided one-eighth interest in and to the said lode, to pay an undivided one-eighth part of the expenses which shall accrue in the development and opening of the said above-described lode.

In witness whereof the parties hereto have hereunto annexed and subscribed their names, and affixed their seals on the day and date first hereinabove written.

(S'g'd) ISAAC W. CHATFIELD. [SEAL.]
(S'g'd) J. C. JOHNSTON. [SEAL.]

Which said contract is the only contract ever made by said Chatfield with said complainant concerning the conveyance to said complainant of any interest in said J. C. Johnston claim.

That afterwards and about the first day of December, A. D. 1880, said Chatfield was informed by the said Edward Dunscomb of the aforesaid contract between said complainant and said Acheson, Dunscomb, and Seaver, and of the aforesaid facts concerning the location of said Smuggler and J. C. Johnston mining claims, and of the confidential relations existing between said complainant and said Acheson, Dunscomb, and Seaver and his co-locators of said
50 Smuggler No. 2 mining claim, and that this was the first time that said Chatfield had any knowledge or information of the existence of said contract or of the facts aforesaid or of the aforesaid relations between said complainant and the persons aforesaid; that, having ascertained that the statements so as aforesaid made by said Dunscomb were true, said Chatfield thereupon proceeded to and did effect a settlement with said Dunscomb, acting for and in behalf of himself and his said wife, Margaret Dunscomb, in pursuance of which a corporation was organized under the laws of the State of Colorado by said Chatfield, Dunscomb, William J. Wilson, Daniel Sayer, and Charles I. Thomson, which said corporation was called the Fulton Mining Company and is the defendant herein of that name, the certificate of incorporation of which was filed in the office of the secretary of state of the State of Colorado on the 11th day of December, A. D. 1880, and that the said settlement with said Dunscomb was the first time that an incorporation in connection with said J. C. Johnston mining claim was ever mentioned, suggested, or contemplated by any person.

That in settlement of the claim of said Dunscomb and his said wife, Margaret Dunscomb, a portion of the capital stock of said company was issued and delivered to them; that a like settlement was shortly thereafter effected with James E. Seaver for and in behalf of his said wife, Belle R. Seaver; that said Margaret Dunscomb and Belle R. Seaver held an undivided one-fourth interest in said Smuggler No. 2 claim in trust for Elizabeth H. Acheson, the wife of said

J. C. Acheson, and that said settlements with said Dunscomb and Seaver affected only their own and their said wives' interest in said claim and did not affect said interest of said Elizabeth H. Acheson.

51 That afterwards, about the 12th day of December, 1880, said Crittenden and Adair executed a quitclaim deed, whereby they released and conveyed all their then right, title, and interest in and to said J. C. Johnston claim to said The Fulton Mining Company, and on the 14th day of December, 1880, said Chatfield conveyed to said company his right, title, and interest in and to said claim; that said company thereupon made application for a United States patent to said J. C. Johnston claim in the United States land office at Leadville, Colorado, and that afterwards and during the period of the publication of the notice of such application, to wit, on the 8th day of April, A. D. 1881, the said Elizabeth H. Acheson and Edward F. Brown and William C. Osborne, grantees of the said Elizabeth H. Acheson, as owners in said Smuggler No. 2 claim, filed in said land office their protest and adverse claim against the issuance of said patent to said The Fulton Mining Company, and within thirty days thereafter, to wit, on the 7th day of May, A. D. 1881, commenced in the circuit court of the United States for the district of Colorado their proceeding and action in support of said adverse claim against said The Fulton Mining Company, Edward Dunscomb, I. W. Chatfield, W. J. Wilson, Daniel Sayer, and Charles I. Thomson to try and determine the title to the said ground in conflict between the said J. C. Johnston mining claim and the said Smuggler No. 2 mining claim, which was all the ground embraced by either of said claims, the said J. C. Johnston claim covering, as aforesaid, the whole of the said Smuggler No. 2 claim, and that on the said 7th day of May, A. D. 1881, the said James C. Acheson, Elizabeth H. Acheson, and one O. H. Dean, grantee of said James C. and Elizabeth H. Acheson, filed in said circuit court of the United States their bill in equity setting forth

52 therein the aforesaid contract between this complainant and the said Acheson, Dunscomb and Seaver and averring and alleging that the location of the said J. C. Johnston claim was made under and in pursuance of said contract and while the same was in force, and that the said complainant fraudulently, instead of locating said J. C. Johnston claim in the names of said complainants claiming one-fourth and of the other parties to said contract, as in said contract provided, had located one-half of said claim in his own name and the other half thereof in the names of said Crittenden and Adair, and setting forth also the conveyance by said Crittenden and Adair to the said J. C. Acheson of the one undivided half of said J. C. Johnston claim, as hereinbefore stated; alleging also that the said complainant was the owner only of an undivided one-fourth interest in said J. C. Johnston claim, and that he and his grantees held the other undivided fourth interest contained in the half interest so as aforesaid located in the name of said complainant in trust for said parties to said contract with said complainant and to the extent of their interest therein in trust for

the said James C. Acheson, Elizabeth H. Acheson, and O. H. Dean, the complainants named in said bill, and praying for a decree of said court that said complainants were the owners of an interest in said J. C. Johnston mining claim, as set forth in said bill, and declaring the defendants named therein to be trustees of said complainants for such interest.

And this defendant, further answering, says that the matters hereinbefore stated concerning the contract aforesaid, the relations between the parties thereto, and the location of said Smuggler No. 2 and J. C. Johnston lodes and the matters set forth in said bill filed by J. C. Johnston, Elizabeth H. Acheson, and O. H. Dean are true.

53 That said complainant had no right to make said location of said J. C. Johnston claim upon and over said Smuggler No. 2 claim, and that said location so made was invalid and conferred upon said complainant and his co-locators, Crittenden and Adair, no rights in and to said J. C. Johnston claim; that said complainant, by reason of the premises, was the owner only of an undivided one-fourth interest in and to the ground covered by said locations and the vein or lode therein and could make a valid conveyance of no other or greater interest therein; that neither said Chatfield nor his grantees could make any defense to said proceedings brought against them, as hereinbefore set forth, neither could they maintain any suit by which they could recover the title to the ground embraced within said J. C. Johnston location or any portion thereof aside from the portion which said complainant had the right to convey to him as aforesaid.

That by reason of the premises the defendants in said proceedings and actions did not attempt to defend against the same, nor did said The Fulton Mining Company attempt by any proceeding whatsoever to recover any portion of said J. C. Johnston mining claim, but it proceeded to and did effect a settlement with the parties to said proceedings by issuing to them a certain portion of the stock of said company; that, having so settled with all said adverse claimants and rightful owners of said ground, the period of publication of notice of application for patent to said J. C. Johnston mining claim need not be abandoned, the greater part of the expense for obtaining such patent having been already incurred and paid, but that said company might proceed under its application to the perfection of its proceedings and the obtaining of a patent

54 for said ground as the J. C. Johnston Lode mining claim, which was accordingly done.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court

shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE STANDARD MINING COMPANY OF KANSAS CITY, *One of the Defendants*,
By C. I. THOMSON AND CHARLES J. HUGHES, JR.,
Its Solicitors.

(Endorsed:) No. 2244. John C. Johnston *vs.* The Standard Mining Company *et al.* Answer of defendant The Standard Mining Company. Filed Mar. 5, 1888. William A. Willard, clerk. C. I. Thomson, C. J. Hughes, Jr., solicitors for said defendant.

55 And afterwards and on, to wit, the 31st day of March, A. D. 1888, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his replication to the answer heretofore filed herein; and the said replication is in words and figures as follows, to wit:

Replication.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court of the United States, Sitting in and for said District.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, Isaac W. Chatfield, Charles I. Thomson, Daniel Sayer, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company, Defendants. } Replication.

The replication of complainant to the answer of the defendant The Standard Mining Company of Kansas City.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this
56 repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

WILSON & STIMSON AND
HUGH BUTLER,
Plaintiff's Solicitors.

(Endorsed:) No. 2244. In the circuit court of the United States within and for the district of Colorado. John C. Johnston, complainant, *vs.* The Standard Mining Company of Kansas City *et al.*, defendants. Plaintiff's replication to answer of the Standard Mining Co. Filed Mar. 31, 1888. William A. Willard, clerk. Wilson & Stimson, Hugh Butler, plaintiff's solicitors.

And afterwards and on the same day, to wit, the 31st day of March, A. D. 1888, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his præcipe for and sued out of and under the seal of said court a writ of subpœna against the Fulton Mining Company; and the said subpœna, with the return of the marshal, is in words and figures as follows, to wit:

Subpœna and Return.

57 THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to the Fulton Mining Company (impleaded with the Standard Mining Company of Kansas City, Isaac W. Chatfield, Charles I. Thomson, Daniel Sayre, William J. Wilson, Edward Dunscomb, & William J. Anderson), Greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in May next (it being the 7th day of May, A. D. 1888), to answer the bill of complaint of John C. Johnston this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the [SEAL.] seal of the said circuit court, at the city of Denver aforesaid, this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 112th year.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

58 *Memorandum.*

The above-named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above

writ is returnable, the complainant's bill will be taken against it as confessed and a decree entered accordingly.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

DENVER, *April 2nd*, 1888.

I have duly executed the within writ by delivering to Daniel Sayre, personally, a true copy of the within writ at the place and time as follows, to wit, on the 1st day of April, A. D. 1888, at Denver, in Arapahoe county.

This writ therefore returned executed, as the law directs, this 2nd day of April, A. D. 1888.

ZEPH. T. HILL, *Marshal*,
By E. C. CURRIER, *Deputy Marshal.*

Marshal's Fees.

Service, 1 persons at 2.00 each	$2 00
Mileage, 2 miles at 6c., going only	12
Total	$2 12

(Endorsed :) Gen. No., 2244. Circuit court of the United States for the district of Colorado. In chancery. John C. Johnston *vs.* The Standard Mining Company *et al.* Alias subpœna *vs.* the Fulton M'ng Co. Returnable to rule day, first Monday in May, A. D. 1888. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Hugh Butler, Wilson & Stimson, of Denver, compl't's sol'r-.

59 And afterwards and on, to wit, the 2nd day of April, A. D. 1888, at chambers, before the Honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Defendants to Produce Documents.

At chambers, before the Honorable Moses Hallett, district judge, the following proceeding was had:

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.* } 2244. In Chancery.

Bill for a deed on accounting and for other relief.

Upon reading the bill of complaint herein, together with the affidavit of the complainant in support of certain portions of said complaint, and it appearing therefrom that there are certain documents

and agreements in the possession of the defendants Thomson and Sayer, and that the complainant is entitled to an inspection thereof, and that such inspection has been refused: Now, therefore, upon motion of complainant, it is hereby ordered that the said defendants, Thomson and Sayer, produce said documents and agreements for the inspection of complainant, the same being described as follows as near as may be:

(1.) A certain agreement and declaration of trust signed by the defendant I. W. Chatfield and the complainant, at Leadville, Colorado, on or about the 12th day of October, A. D. 1880, for the reconveyance by said Chatfield to the complainant of an undivided one-eighth interest in the J. C. Johnston mining claim.

60 (2.) A certain agreement or declaration of trust made by and between said Chatfield and said Thomson and Sayer, whereby said Chatfield agreed and declared that he held an undivided one-eighth interest in said J. C. Johnston mining claim upon certain trusts and conditions, as stated in the bill of complaint herein.

And that said agreements and writings be produced within three days from the service of a copy of this order upon said defendants Thomson and Sayer or either of them, and that the same be left with the clerk of this court until further order, and that thereupon the complainant and his attorney be allowed to inspect the same and make copies thereof.

And in default thereof that the said defendants Thomson and Sayer show cause within said three days after service of a copy of this order for not producing said documents and agreements pursuant to this order.

And afterwards and on, to wit, the 1st day of May, A. D. 1888, there was filed in said court and in said cause a certain stipulation, and the said stipulation is in words and figures as follows, to wit:

Stipulation to Withdraw Contract.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

61 JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, MO., *et al.*, Defendants.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that the contract between plaintiff and the defendant I. W. Chatfield, which is in the possession of the clerk of said court upon the order of the honorable district judge, may be withdrawn by defendant; provided that the plaintiff and his attorneys may at any time be allowed to inspect the same during the

progress of this suit, and that the same will be furnished for use in court when required.

HUGH BUTLER,
Attorneys for Plaintiff.
CHAS. I. THOMSON,
Attorneys for Defendants.

MAY 1, 1888.

Received the contract above mentioned.
CHAS. I. THOMSON,
Att'y for Def't.

(Endorsed:) No. 2244. In the circuit court of the United States. John C. Johnston, complainant, *vs.* The Standard Mining Company of Kansas City *et al.*, defendants. Stipulation as to withdrawal of contract. Filed May 1, 1888. William A. Willard, clerk.

62 And afterwards and on, to wit, the 31st day of August, A. D. 1888, there was opened, published, and filed in said court and in said cause the depositions of James C. Acheson, Ed. F. Browne, Isaac W. Chatfield, Daniel Sayer, Edward Dunscomb, William C. E. Kock, Joshua N. Dustin, James C. Johnston, James Millar, and Louis Johnston, on behalf of complainant and defendants, and the deposition of James C. Acheson, on behalf of complainant, is in words and figures as follows, to wit:

Deposition James C. Acheson Behalf Defendants.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States in and for said District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY and Others, Defendants.

It is hereby stipulated and agreed by and between the above-named complainant and the above-named defendant, The Standard Mining Company of Kansas City, by their respective solicitors, that the depositions of witnesses to be read in evidence on behalf of the said The Standard Mining Company of Kansas City, at the final hearing of said cause, may be taken as follows, to wit, on Monday, the 18th day of June, A. D. 1888, at the law office of
63 Offield & Towle, in the Adams' Express building, 183 to 189 Dearborn street, in the city of Chicago, State of Illinois, before Frederick C. Goodman, a notary public, said law office being room 99 in said building.

The witness to be examined at said place on said day is James C. Acheson, and his deposition shall be taken between the hours of 10

o'clock a. m. and 6 o'clock p. m. of said day, and the taking thereof shall, if necessary, be continued from day to day thereafter at the same place and between the same hours until the same shall be completed.

The giving of notice of the taking of such deposition and the formalities incident thereto are hereby waived, and said deposition, when so taken and filed in the office of the clerk of said court, may be read in evidence at the hearing of said cause by said The Standard Mining Company of Kansas City in the same manner and with the same effect as if notice of such taking had been duly and regularly given.

CHARLES S. WILSON,
Attorney for Complainant.
CHARLES I. THOMSON,
Attorney for Defendant.

Dated June 11, 1888.

64 United States Circuit Court, District of Colorado.

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*

At Chicago, in the State of Illinois, on this 18th day of June, A. D. 1888, at 2 o'clock p. m., before me, Frederick C. Goodwin, a notary public within and for Cook county, Illinois, residing at Chicago, in said State of Illinois, at the office of Offield & Towle, room 99, Adams Express building, Chicago, Illinois.

Present: Charles S. Wilson, Esq., on the part of said complainant, and Charles I. Thomson, Esq., on the part of said defendants.

And thereupon the following proceedings were had before me in said cause pursuant to stipulation hereto attached.

And thereupon defendants' counsel calls as a witness in their behalf Mr. JAMES C. ACHESON, who, being by me first duly sworn to state the truth, the whole truth, and nothing but the truth in said cause, deposes as follows in answer to interrogatories propounded to him by Mr. THOMSON:

Q. 1. What is your name, age, and residence?

A. James C. Acheson; 39; with the Lake Michigan & Lake Superior Transportation Company, in Chicago.

Q. 2. What position do you occupy with that company, Mr. Acheson?

A. Really no defined position. I have charge of the freight matters and matters connected with the office.

65 Q. 3. Mr. Acheson, were you ever interested in a mining claim in Roaring Fork district, Pitkin county, called the "Smuggler No. 2"?

A. Yes, sir.

Q. 4. Who were interested with you in that claim?

A. James E. Seaver, Edward Dunscomb, and J. C. Johnston originally were interested with me.

Q. 5. Under what arrangement did you become interested in that claim?

A. We entered into a contract, called the grub-stake contract, with said J. C. Johnston and one Rouce, at Denver, Colorado, in the winter of 1880.

Q. 6. Where was that contract made?

A. At Denver, Colorado, at the Grand Central hotel.

Q. 7. About what time was it made?

A. In February, I think, of 1880; either the latter part of February or the first of March.

Q. 8. After that contract was made what was done?

A. Johnston was furnished with provisions, burrows, and money.

Q. 9. About how much money, Mr. Acheson, did you pay him?

A. I think we gave him in the neighborhood of $100, starting out at that time. I don't recollect exactly.

Q. 10. Do you remember how much provisions you purchased?

A. In dollars and cents, I don't. We purchased enough, probably, for thirty or forty days' supply for three or four men.

Q. 11. Do you remember how much money you were to pay him under that contract? (Contract shown to the witness.)

Objected to, as the contract speaks for itself.

66 A. We agreed to pay them $37.50 each per month in addition to furnishing them with grub.

Q. 12. Is this paper, Mr. Acheson, the grub-stake contract you speak of?

A. Yes, sir; this is a copy of the original.

Q. 13. Have you the original in your possession?

A. It may possibly be in my papers in Kansas City.

Q. 14. I will ask you if you know whose handwriting the signature of John C. Johnston is in.

A. That is Johnston's handwriting, to the best of my knowledge and belief.

Objected to because the execution of the contract is not shown on both sides.

Contract offered in evidence and marked "Exhibit A."

Q. 15. It states here, Mr. Acheson, that you were to give Mr. Johnston on starting for Roaring Forks $275 to pay for their outfits and one month's advanced wages. What was done in that matter?

A. We paid for the full outfits and gave them the advanced money as agreed.

Q. 16. State whether any change was afterwards made in the contract.

A. Well, afterwards Mr. Rouce was eliminated from the arrangement.

Q. 17. How long after, Mr. Acheson?

A. Probably about 60 or 90 days.

Q. 18. What change was made then in the proportions that the parties were to have?

67 A. It was to be divided into quarters.

Q. 19. Who were to have these several quarters?

A. I was mistaken before. The arrangement was made that Johnston was to have a quarter and Dunscomb and wife three-eighths and Seaver and wife three-eighths in the locations; Dunscomb and Seaver to deed to my wife, namely, two-eighths and one-eighth, owing to the fact that I was very much embarrassed financially at the time.

Q. 20. Well, after paying for the outfit and paying Johnston the money you speak of what was then done?

A. Johnston and Rouze started over to Prospect.

Q. 21. That was before Rouze dropped out?

A. Yes, sir.

Q. 22. When did you first see this Smuggler No. 2 claim?

A. I think it was along in June, 1880, the first time.

Q. 23. Had the claim been located at that time?

A. Yes, sir.

Q. 24. In whose names had the location been made?

A. J. C. Johnston, Edward Dunscomb, Margaret Dunscomb, his wife; J. C. Seaver, and Belle R. Seaver.

Q. 25. What work had been done on the claim when you went there?

A. A tunnel was driven in, when I first saw it, seventy-five feet into the hill, and from the end of the tunnel there was a shaft sunk some 20 or 30-odd feet.

Q. 26. About what time in June was this?

A. My recollection is a little hazy as to whether it was June or July; it was along there somewhere; my recollection, however, is that it was the latter part of June.

68 Q. 27. Was the end of that tunnel and that shaft in mineral in any place?

A. It was a body of solid lode, grade mound, cut right through there 14 to 16 feet.

Q. 28. How deep was that shaft at the end of the tunnel at that time?

A. 20 to 30 feet, I should think, and the shaft was sunk on that mineral on the theory that the Smuggler mine was lower down the hill.

Q. 29. What proportion of that claim was located in the name of J. C. Johnston?

A. One-fourth.

Q. 30. Who was working on the claim at the time you were there?

A. Johnston and three other men, I believe.

Q. 31. Was Mr. Seaver there?

A. I think not at that time.

Q. 32. Do you know anything about his having gone away sick?

A. I was not there when he was sick. It may be that Mr. Seaver

was with me at that time and I may have left him there. He was afterwards taken sick.

Q. 33. Was Dunscomb there?

A. Dunscomb was in there and went in after Seaver.

Q. 34. How long did you remain there at that time?

A. Only a few days.

Q. 35. What, if any, money did you pay to Mr. Johnston or to parties working the claim?

A. Well, at that time all claims up to that date were settled.

69 Q. 36. Where did you go from there?

A. I think I went to Maysville, Colorado, and from there to Kansas City.

Q. 37. When did you return to Aspen?

A. I think I got there the night of the 4th or the 5th of August.

Q. 38. For what purpose did you go?

A. To pay the men off. Mr. Dunscomb went with me. We went over in a spring-wagon, the first wagon that ever went out in that district.

Q. 39. What did you find when you were there?

A. I found that Johnston had entered into a combination with George A. Crittenden and a man named Adair and had jumped and had relocated under the name of J. C. Johnston, using our workings as their basis of location.

Q. 40. Do you know whether the relocation covered the same ground as the original Smuggler No. 2?

A. With a slight variation in the lines.

Q. 41. What did you do when you made that discovery?

A. I got a horse at 5 o'clock the next morning and started after them.

Q. 42. Where did you find them?

A. I found them in Leadville negotiating for the sale of the J. C. Johnston mine.

Q. 43. About what day of the month did you find them in Leadville?

A. Must have been the 6th or 7th of the month of August.

Q. 44. Well, sir, what did you do when you found them?

70 A. Well, before finding them I consulted an attorney, and then went down and demanded that they turn over the property at once to save trouble.

Q. 45. Well, what did they say?

A. They tried to make a bluff of it, and I told them it was no use talking. They tried to steal the mine and I didn't propose to have it. They would have to turn it over or there would be a merry war

Q. 46. What was then done?

A. They asked me to meet them again at 12 o'clock, and I had another meeting with Crittenden and Adair in the front parlor of the hotel, upstairs. They pleaded that they had paid the men and had squared the provision bill and a few other little things and were out certain monies for expenses independent of that, and I told them of course I would pay anything that was gotten from the mine legitimately. I had gone over there to pay, and was just as ready to

pay as at any other time, and as far as what money they were out I thought ought to be out, but sooner than have any trouble, if they would come to Pendere's office and sign this deed conveying J. C. Johnston's mine over to me that I would reimburse them for what they had spent and allow them $50 on my expenses.

Q. 47. This was Crittenden and Adair?

A. Yes, sir.

Q. 43. Did you pay them?

A. Yes, sir. They went up with me to Pendere's office, and, in the presence of Judge Pendere and Frank Eames, I paid them over this money.

71 Q. 49. What did you do with Mr. Johnston?

A. Well, Johnston being one of the original locators and working under a grub-stake contract with us, I couldn't consider that his claim was of any account at all, as it was fully covered by this grub-stake contract.

Q. 50. Well, what did you finally do with him?

A. Well, he was laid up with a sore foot and was on his road to home. I finally paid him money on account and sent him home.

Q. 51. Do you remember how much money you paid him?

A. I do not recollect exactly, but I remember saying to him that legally I did not think he had any claim to any money he having violated his contract with us, and then I paid him—it must have been quite a respectable little sum—to get him home and have some money for his wife when he got there.

Q. 52. What, if anything, did he turn over to you at the time you paid him this money?

A. I think he turned over the Johnston location certificate.

Q. 53. Had it been recorded at that time?

A. No, sir.

Q. 54. Do you remember what you did with it?

A. I do not.

Q. 55. How did he express himself; as satisfied or otherwise with your deal with him?

A. Well, he seemed to think he had been made a tool of by Crittenden and Adair, they filling him up with stories that myself and partners were financially embarrassed and could not pay the men and that he was suffering from this gunshot wound, and he gave that as a sort of an excuse and expressed himself as satisfied now that everything was all right.

72 Q. 56. State what you said to him about his having done right when he relocated that claim.

A. He did not claim that we had done right.

Q. 57. He states, Mr. Acheson, that you told him that he had done just right, and that you would have done the same thing, or something to that effect. How is that?

A. That is simply a lie. I would hardly tell a man who was robbing me of a mine that he was doing right.

Q. 58. Well, what did you do after having made that settlement with these parties?

A. I stayed in Leadville some little time and then, I think, I went down to Maysville.

Q. 59. When did you go over to Aspen again?

A. I think in September; I am not so positive about that, though.

Q. 60. Well, what did you do when you went over there?

A. Seaver was there or went with me. I only stayed, I think, about twenty-four hours, and he came out again. My time was taken up with other interests.

Q. 61. Was the mine being worked when you went over there?

A. Yes, sir.

Q. 62. Who was working it?

A. A Swede, I believe, was put in charge?

Q. 63. Under whom was he working?

A. Under Seaver, Dunscomb, and Acheson for daily wages.

Q. 64. Do you recollect of Mr. Holden being there?

A. Yes, sir; he was there at the same time.

Q. 65. Did he go up to the mine?

73 A. I think he had been up there. I don't think he went up with me. I think he had seen it, although I am not so positive as to that.

Q. 66. Now, Mr. Acheson, where did this money come from that you paid Crittenden and Adair and Johnston with?

A. Out of my pocket.

Q. 67. I will ask you whether it was the same money that you took over to Aspen to settle with.

A. Yes, sir; money to pay off with.

Q. 68. What, if any, sale of the mining property did you make in Leadville about that time?

A. I think that after this payment to Crittenden and Adair and settlement of the pretended Johnston claim that I sold two properties, or an interest in two properties, located on the Yankee Hill, Leadville, to Dr. J. C. Neeley, of Leavenworth, Kansas.

Q. 69. Who was interested in those properties besides yourself?

A. Judge Pendere. Neeley had an interest before he bought this from me and the foreman.

Q. 70. Had Mr. Seaver an interest?

A. Mr. Seaver had an interest, but it was not in his name, for the reason that I had advanced the money to pay for his interest and that he had not made a settlement, and I don't think the deed had passed to him, although I may have made a deed to him.

Q. 71. When you settled with Mr. Johnston what did he say about abandoning the J. C. Johnston claim?

74 A. His remark was that now he had got it fixed; just the same as though there was no Johnston mine.

Q. 72. Did you record the deed you received from Crittenden and Adair?

A. I think it was recorded later.

Q. 73. Do you remember how much later?

A. I do not.

Q. 74. Can you tell why it was not recorded at the time?

A. My impression of that is that I had the original location certificates in my possession, and simply took this deed as an extra protection from Crittenden and Adair, feeling and knowing the law that if I held the original certificates they could hardly record it, unless they recorded fraudulent ones made afterwards.

Q. 75. Have you ever seen Mr. Johnston since that time?

A. I think not.

Q. 76. Did he ever make any application to you after that time for any further settlement?

A. Yes; he wrote to us, I think, for some money.

Q. 77. How long after that?

A. It was some time along towards the winter, I guess.

Q. 78. Could you approximate the month?

A. I could not. I do not know whether he was answered at all or not.

Q. 79. Now, Mr. Acheson, when did you next hear of this J. C. Johnston claim?

A. The next I heard of it was through Dr. Dunscomb writing me at Kansas City that Thomson serves Chatfield and Wil-
75 son trying to get possession of the mine under pretended claim from Johnston.

Q. 80. Where is that letter?

A. It has been destroyed.

Q. 81. Well, Mr. Acheson, when you heard that that so-called J. C. Johnston claim had been revived, what did you do?

A. I consulted Mr. Holden and my other partners in interest and finally we went out to fight—went to Leavenworth to fight the case. The way we got knowledge of it was that they had applied for a patent, I believe, for the J. C. Johnston lode.

Q. 82. Did you fight it, Mr. Acheson?

A. We went out and filed an adverse claim.

Q. 83. Did you commence any suits?

A. There was a suit brought in the United States court at Denver.

Q. 84. Are you interested in this property, Mr. Acheson?

A. Myself personally; no, sir.

Q. 85. When did you part with your interest?

A. In 1881.

Q. 86. Why did you part with it?

A. To raise money.

Q. 87. You were not able to make this fight?

A. I had not the money to carry on this litigation and I thought the best I could do was to make what I could out of it.

Q. 88. What do you know about any collusion with anybody about the bringing of this suit and filing that adverse claim?

A. There was no collusion; at that time it was a bitter fight; no love lost between them.

76 Cross-examination by Mr. WILSON:

X Q. 1. Mr. Acheson, do you mean to be understood as stating that you and your partners in all respects complied with the terms of this grub-stake contract with Mr. J. C. Johnston?

A. Up to the time that J. C. Johnston jumped the mine every requirement of that grub-stake contract was lived up to by us.

X Q. 2. Well, now, this states, among other things, that the parties of the second part agree to pay said Johnston and Rouze, parties of the first part, on starting for Roaring Forks, $275. Did you pay that money?

A. We paid it in money or goods.

X Q. 3. You don't mean to say, then, that you paid in cash at that time $275?

A. We paid out in cash that much; yes, sir.

X Q. 4. But that cash that you paid out was not all to Johnston and Rouze, but a part of it went into the outfit?

A. We were with them and helped to buy some things with them, which was allowed.

X Q. 5. But this contract states that the parties of the second part will pay $275 and would pay for their outfit and one month's advance wages. Now, did you comply with that provision of the contract as to wages, outfit, and the $275 as to cash?

A. $275 was to pay for their outfit. It was not in addition to their outfit.

X Q. 6. Now, that is you- interpretation of this contract, is it?

A. Yes, sir.

X Q. 7. And that the contract did not require you to pay them any money in cash, except a month's wages in advance?

77 A. Yes, sir.

X Q. 8. But that notwithstanding that interpretation of the contract, you did pay to them $100 in cash; is that correct?

A. I haven't stated so. I stated we paid them something like $75 or $100; I forget which.

X Q. 9. Are you perfectly sure of that?

A. That is my recollection of my words. I might have said about $100.

X Q. 10. I understand you to state that you first went to Aspen upon this business in the latter part of June or early in July; is that correct?

A. That is my recollection.

X Q. 11. Had you been there prior to that time?

A. I think not.

X Q. 12. At that time was Mr. Seaver or Dunscomb there?

A. I think Mr. Seaver was there the first time I went there.

X Q. 13. Where was Dunscomb?

A. Dunscomb was at Buena Vista.

X Q. 14. How long did you remain?

A. Only a very short time.

X Q. 15. And at that time how much money did you pay the men for wages or for supplies?

A. We paid—that is, the company paid—Johnston, Acheson, and Seaver the labor and provision bills.

X Q. 16. I ask you how much money you paid.

A. I can't tell exactly.

78 X Q. 17. Do you know how much, if any, money was paid by Mr. Dunscomb and Mr. Seaver to the men for supplies at that time?

A. I can only answer in a general way.

X Q. 18. If any money was paid in settlement of the wages, account, and for supplies, who paid the money?

A. The firm of Acheson, Dunscomb and Seaver.

X Q. 19. I will ask you who handled the money.

A. I cannot answer.

X Q. 20. Who acted as the paymaster?

A. Whoever happened to be attending to those things at that time.

X Q. 21. Did you have any sort of an accounting between you at that time to show what proportions each had paid and for the purpose of a settlement as between yourselves?

A. We probably settled some time during that summer.

X Q. 22. Have you any definite recollection about that matter?

A. Well, I have a definite recollection that they were paid.

X Q. 23. What amount of money was paid, if you remember?

A. I don't know.

X Q. 24. Can you approximate?

A. I will give no answer except what I have given, because I cannot give any other.

X Q. 25. I will ask you when you first went there whether you inquired as to the state of the account of the mine for the development of the property at that time.

A. I, naturally being one of the owners, when I went there looked into the matter as to how it was developed and as to accounts.

79 X Q. 26. Now, you say you cannot even approximate as to what the amount of indebtedness as to wages and for supplies at that time was, and that you can give no more definite answer than that all the bills were settled. Is that true?

A. That was what I stated.

X Q. 27. That is, that you cannot answer the question any more definitely?

A. I cannot and be positive. I will not answer unless I can be sure.

X Q. 28. Now, then, I will ask you whether anybody else besides yourself personally was authorized to contract or to pay the indebtedness of the mine.

A. Mr. Dunscomb and Mr. Seaver had the same legal rights as myself.

X Q. 29. Did Mr. J. C. Johnston have any such authority as that to contract bills or to pay bills?

A. Mr. J. C. Johnston had authority, which was granted him under the grub-stake contract, to buy provisions and employ labor.

X Q. 30. Might it not have been possible that bills had been contracted by your partners or by some one that were not known to you at the time?

A. There were only two stores, I think, in Aspen at that time, and I recollect being present when the bills were paid.

X Q. 31. You went to the store for that purpose?

A. Yes, sir.

X Q. 32. Did you interview the men personally to see that they were all paid?

A. I don't think I personally attended to that.

80 X Q. 33. Are you certain then that they were all paid?

A. Yes; I am positive that they were paid; the accounts were settled and the pay-roll was always satisfactory.

X Q. 34. Are you just as certain that the men were paid their wages as that the grocery bill and supplies were settled?

A. I don't remember just exactly about the labor.

X Q. 35. Then are you still willing to swear that the labor bills were all paid before you left?

A. To the best of my knowlege and belief they were all paid.

X Q. 36. Do you remember a workman by the name of White?

A. Yes, sir.

X Q. 37. Did you pay him some money at Leadville?

A. I think he was paid partly while out there and I think I afterwards paid him at Leadville a hundred dollars or thereabouts.

X Q. 38. Then you say that he was partly paid out there, and at what time?

A. I cannot tell exactly.

X Q. 39. Do you mean at the time that you left or about that time?

A. About that time.

X Q. 40. So, then, that as to this man White it is not true that all the labor bills were paid at the time you left Aspen?

A. The money I paid this man White might have been an indebtedness accrued after I left there.

X Q. 41. Now, at the time that you settled with Mr. White in Leadville how much did you owe him?

A. My recollection is that I paid him something like $120.

X Q. 42. How much was due him at that time?

81 A. I think he got all that was due, although there might have been a little difference.

X Q. 43. If he did not get all that was due what was the reason for it?

A. It might have been a lack of money; I don't know.

X Q. 44. If there was any balance due him had you or your partners ever paid him since?

A. I don't recollect.

X Q. 45. Isn't it a fact that at that time you were owing him for all the time that he had ever worked on the mine, and that the money due him amounted to $150, and that upon that amount you paid him $100?

A. I don't recollect.

X Q. 46. Now, then, when you settled up these bills in Aspen, did you pay anything to Crittenden and Adair or either of them?

A. Crittenden had a store bill paid.

X Q. 47. Was Crittenden running one of these stores that you speak of?

A. Yes, sir.

X Q. 48. How much of a bill did you owe him, and did you pay Crittenden at that time, if you remember?

A. I don't remember.

X Q. 49. Are you perfectly certain that you paid all that you owed to Mr. Crittenden at that time?

A. That is my recollection.

X Q. 50. Did you at that time pay Mr. J. C. Johnston anything on his personal account?

A. I think Johnston got some money; yes.

82 X Q. 51. Do you remember how much?

A. I do not.

X Q. 52. Are you sure that he got anything on his personal account under this contract for wages?

A. I think he did.

X Q. 53. But you don't remember how much; and do you remember how much you were owing him?

A. I do not.

X Q. 54. Now, then, you state that these locations were made in the name of the wives of your partners, Dunscomb and Seaver, and that your interest was not yours, for the reason that you were financially embarrassed at that time?

A. That is correct.

X Q. 55. Were you married at that time?

A. Yes, sir.

X Q. 56. But you preferred that these interests should be located in the names of the wives of Dunscomb and Seaver for your protection rather than the name of your wife?

A. Well, that was the way it was settled; that is my recollection of it now.

X Q. 57. Now, when you first saw the property, I understand you to say that there was a tunnel driven in about 75 feet, and from the end of the tunnel there was a shaft sunk on the vein some 20 or 30 feet; is that true?

A. Yes, sir.

X Q. 58. And that there was a vein of mineral disclosed about 14 feet in width?

A. Low-grade mineral, yes.

83 X Q. 59. Did you have any tests made of that mineral?

A. No official tests.

X Q. 60. You simply judged from appearance?

A. Yes, sir.

X Q. 61. Could you tell from its appearance whether it was low grade or high grade?

A. Well, it resembled other low-grade mineral that I was familiar with.

X Q. 62. While you were there you say that Johnston was working three men?

A. Yes; I think it was 3 or 4 men.

X Q. 63. Do you remember any of the men?

A. *Know*, I do not; except the big Swede that was there and this man White.

X Q. 64. I will ask you whether it is not a fact when you went out and left Aspen you did not go for the purpose of raising money and supplies to work the mine.

A. I went out to attend the superintendency of the Kansas City Consolidated Mining Company, with which I was connected, with headquarters at Maysville, Colorado.

X Q. 65. Did you expect to take any active part thereafter in the working of this Smuggler No. 2 property?

A. I expected to furnish my share of means.

X Q. 66. And how were you to furnish that to Mr. Johnston or to your other partners to pay Johnston and to pay the bills?

A. It was to be paid by the firm, and, of course, I was to stand my share of the expenses.

84 X Q. 67. Who was to be the active man of the firm at Aspen after you left?

A. There was nobody especially designated. We were all to look after matters. Dunscomb and Seaver were also equally interested with me.

X Q. 68. What did you say to Mr. Johnston as to the payment of the wages and other bills after you left?

A. The arrangement was we were to come back about the first of August and settle up for the July accounts.

X Q. 69. Who was to come back—all of you?

A. Some of the firm. It was immaterial which one.

X Q. 70. Now, from Aspen you went to Maysville and from Maysville to Kansas City?

A. I probably went to Kansas City. I used to run in there about every four or six weeks.

X Q. 71. And when you returned to Aspen you learned for the first time of the relocation of the ground as the J. C. Johnston mine?

A. Yes, sir. The first we knew of it was after we drove up to the store there.

X Q. 72. Do you remember who informed you of it?

A. One of the civil engineers who was working there on the roads told me about it. He told me that Crittenden, Adair, and Johnston had left that morning for Leadville.

X Q. 73. Do you mean that these parties had gone to Leadville for the purpose of selling the mine to other parties or simply for the purpose of completing the arrangement between Johnston and the new locators, Crittenden and Adair?

85 A. I cannot say what they went for. I know what they did when they got there. They offered the property for sale to several parties.

X Q. 74. Well, now, to whom did they offer it?

A. It was put in the hands of Frank Eames for one, a mine broker, to try and sell.

X Q. 75. Did they offer it to anybody else?

A. I understand they offered it to Mr. Chatfield.

X Q. 76. I will ask you, Mr. Acheson, when you settled with

Crittenden and Adair how you paid the money to them. Did you pay it in cash or by checks?

A. Paid it in cash.

X Q. 77. Are you certain that you paid in currency?

A. Yes, sir.

X Q. 78. I will ask you if it is not a fact that you paid off money by a draft on other parties, which draft was endorsed by Judge Pendere.

A. No, sir. Judge Pendere would not be guilty of endorsing a draft that way.

X Q. 79. You did not pay it in such a way as that?

A. No, sir; I never met Judge Pendere until that time.

X Q. 80. When you went to Leadville did you take this money in currency with you?

A. Yes.

X Q. 81. Where did you bring it from?

A. The probabilities are it came from Kansas City.

X Q. 82. Was it the same money that you took to Aspen?

A. Yes.

86 X Q. 83. And from there you carried it on horseback to Leadville?

A. Yes.

X Q. 84. Now, I will ask you further to refresh your recollection, if you can—or if it is true, saying nothing about any endorsement by Judge Pendere—whether it is not a fact that you drew a draft for this money, or at least for a part of it, which draft was returned protested, and that afterwards you had to make it good.

A. No, sir; I did not—that is, at Leadville.

X Q. 85. Did you have any correspondence with Mr. J. C. Johnston after this transaction at Leadville besides what you have stated?

A. I don't recollect of any.

X Q. 86. Did you not shortly after this transaction write him a letter to Littleton, Colorado?

A. I don't recollect it.

X Q. 87. You are not sure whether you did or did not?

A. I do not.

X Q. 88. When was it that you last sold your remaining interest in this property? Was it before or after the institution of the suits about which you have been examined?

A. It was after these suits were brought.

X Q. 89. Are you sure about that?

A. It was on or about the 23rd day of April, 1881.

X Q. 90. Do you know when the suits were brought?

A. Prior to that.

X Q. 91. Are you sure of that?

87 A. Well, the commencement of the suit was prior to that. I believe the original filing of the suit in the United States court was after I had sold my last interest.

X Q. 92. That last interest you sold to whom?

A. W. C. Oburn.

X Q. 93. How much of an interest was that?

A. Five thirty-seconds.

X Q. 94. What other sales out of your interest had you made prior to this last sale?

A. I made a sale to N. F. Brown.

X Q. 95. How much of an interest did you sell to him?

A. I don't recollect exactly the proportions that we sold. We sold to O. H. Dean also.

X Q. 96. I will ask you to look at "Exhibit A 1" and state whether that is a copy of the deed of the five thirty-seconds that you executed to Mr. Oburn.

A. This is a copy of the deed.

X Q. 97. And that you say was five thirty-seconds?

A. This may have covered some other little interest which I sold before.

X Q. 98. How could it cover interests which you had sold before?

A. It made a clean deed of all my right, title, and interest.

X Q. 99. Now, look at this deed, Exhibit X, and state whether that is the deed under which you sold the interest to Mr. Brown.

A. This is none of my interest. It is Seaver and Dunscomb's interest.

X Q. 100. You executed that, did you?

88 A. I was their attorney-in-fact. That gives me a clue as to where I can correct a certain portion of my testimony, where I stated that the entire interests were located in the names of J. C. Johnston, Belle R. Seaver, and Margaret A. Johnston. My wife's and my own interest was protected by the fact that I had their power of attorney.

X Q. 101. Now, I understand you to say that this conveyance of an undivided one-twelfth of an undivided three-fourths to Mr. Brown covered no part of your own interest?

A. It covered as much as my own in proportion as it did of Dunscomb and Seaver's by virtue of an agreement and power of attorney which I held.

X Q. 102. Now, I will ask you, at the time of your settlement with Mess. Crittenden and Adair at Leadville, if you took from them your deed of a one-half interest of J. C. Johnston; whether you and your partners had equal undivided interests in the property.

A. Yes, sir; we did.

X Q. 103. And in January, 1881, you made a deed, did you not, to Mr. James E. Seaver of an undivided five thirty-seconds in the J. C. Johnston claim?

A. Of course, I deeded him his proper proportion.

X Q. 104. Did you make such a deed to Mr. Dunscomb?

A. I am not so positive as to that, because at that time Dunscomb and myself were in doubts as to what to do.

X Q. 105. Then, if Seaver's interest was five thirty-seconds at that time, Dunscomb's and your interest was also five thirty-seconds?

A. Yes, sir.

89 X Q. 106. Which would be altogether fifteen thirty-seconds, being one thirty-second less than a half, and that one thirty-

second represents the interest, does it not, which you had disposed of to Mr. Edward Brown?

A. I presume it does.

X Q. 107. That is the way that it was calculated, was it?

A. Yes, sir.

X Q. 108. Did you have anything to do with the sale of a one-eighth interest in this property, under a deed signed by Mr. Seaver, in October, 1880, to Mr. Oburn, of Kansas City?

A. I was present; however, I don't think I remember anything about it.

X Q. 109. You know of such a conveyance, do you?

A. I do.

X Q. 110. Did you have any interest in that sale or in its proceeds?

A. I don't recollect now whether I did or not.

X Q. 111. Did one-half of that one-eighth interest conveyed by Mr. Seaver, or any part of that one-eighth interest, come out of your interest and share in the property?

A. I don't recollect positively, but I think it was very likely; we were selling together.

X Q. 112. Then, on second thought, Mr. Acheson, you think that a half of this eighth interest deeded by Mr. Seaver to Mr. Oburn came out of your interest in the property?

A. Probably part of it came out; not the whole of it.

X Q. 113. Well, I say a half of the eighth.

90 A. No; I don't know as there was that much of it. Probably part of it, although I cannot say for certain.

X Q. 114. Well, it is true that after the conveyance of that one-eighth to Mr. Oburn by Mr. Seaver there still remained, according to your calculation, an undivide- five thirty-seconds in Mr. Seaver and an undivided five thirty-seconds in yourself.

A. I don't remember anything about what Mr. Seaver had left.

X Q. 115. If it is a fact that subsequently in January, 1881, you executed a deed to Mr. Seaver of an undivided five thirty-seconds in the J. C. Johnston property, did that correctly represent his interest according to your calculation?

A. I presume that to be correct.

X Q. 116. And is it your present recollection when you deeded to Mr. Oburn in the spring of 1881 all of your interest and your wife's interest in this property that that remaining interest was an undivided five thirty-seconds?

A. That is my recollection of it.

X Q. 117. Now, then, you state, I believe, that you first received your information as to the relocation of this Smuggler No. 2, known as the J. C. Johnston mine, from your partner, Dr. Dunscomb?

A. No, sir.

X Q. 118. What was your statement?

A. I stated that I first knew of the relocation by going over there and asking and finding it out in person.

X Q. 119. I should have said that your first information that the J. C. Johnston was still an existing claim came from Dr. Dunscomb

A. That is my recollection.

X Q. 120. And about when was that?

91 A. Along in the fall of 1880 or the early part of — winter of 1881.

X Q. 121. And that was a letter that you received from Dr. Dunscomb?

A. Yes, sir.

X Q. 122. Can you state the substance of the contents of that letter?

A. I cannot.

X Q. 123. Did you state in that letter what he had done, or expected to do, with regard to the enforcement of his claim against the claimants of the property?

A. I do not recollect. My only recollection of that letter is the bare fact that such a claim had been revived.

X Q. 124. Now, when you went out to see about the enforcement of your claim, when was it? Was it immediately after the receipt of this letter?.

A. No, sir; some time after.

X Q. 125. How long after?

A. I could hardly tell exactly. It must have been the latter part of April.

X Q. 126. At that time did you interview any of the officers or agents of the Fulton Mining Company claiming to know the J. C. Johnston mine and premises with a view to getting from them a recognition of your right and interest?

A. I did not.

X Q. 127. What was the first thing you did in regard to your claim?

A. To get the papers ready to file an adverse claim in the United States court.

X Q. 128. Was it before or after the filing of the adverse claim that you made the sale to Mr. Oburn?

92 A. I think it was after—that is, after the beginning of the proceedings; it may not have been after the claim was filed. Ithink the claim was legally filed after my sale, but the legal proceedings were going along and in going back home with Mr. Holden on the Santa Fé road we agreed on a sale. That is my recollection of it.

X Q. 129. After the filing of the papers—that is, the adverse claim and the complaint in the court—was there any attempt at settlement between the parties in suit?

A. I know nothing about that to my knowledge.

X Q. 130. Did Dr. Dunscomb at the time that he wrote you say anything about a settlement or contemplated settlement of his interest or for his interest in the claim of the property?

A. I have already answered that. I remember nothing about the Dunscomb letter, except the bare fact that such a claim had been revived.

X Q. 131. Did you know or do you know that, as a matter of fact,

Dr. Dunscomb received an undivided one-third or at the rate of one-third of all the stock of the Fulton Mining Company?

A. As a fact, I don't. I understood he went over to the enemy and was treated accordingly.

X Q. 132. It appears by the records that after Mess. Crittenden and Adair made their deed to you in August, 1880, they made a second deed of all their interest in that property to the Fulton Mining Company in December, 1880. Do you know anything about the circumstances of that transaction?

A. I do not.

93 X Q. 133. You say that Mr. Chatfield was a prospective purchaser of this property at Leadville in August, 1880?

A. Chatfield and Wilson together.

X Q. 134. Now, what more do you know about that, if anything?

A. Nothing.

X Q. 135. Where did you get your information?

A. At Leadville.

X Q. 136. From whom?

A. I forget now.

X Q. 137. Did you see Mr. Chatfield or Mr. Wilson?

A. Never met them; I think my information came from Frank Eames.

X Q. 138. Was there any agreement or any accounting between you and your partners, Seaver and Dunscomb, which would have entitled Dunscomb at any time to a one-third interest in that property?

A. No, sir.

X Q. 139. Did Dunscomb have any greater interest than you and your partner, Seaver?

A. No, sir.

X Q. 140. How long had you been gone from Aspen before you returned in August?

A. About 5 or 6 weeks.

X Q. 141. And how many men were working in the interval, if you know?

A. I think it was 3 or 4 or 5.

X Q. 142. Was there any work done on the other mining claims or property mentioned in this grub-stake contract?

94 A. Some desolatory work.

X Q. 143. What did that amount to?

A. More work in assessment than anything else.

X Q. 144. Did you say that when you went in *in* August that Dunscomb accompanied you?

A. Yes, sir.

X Q. 145. Are you sure about that?

A. Dr. Dunscomb and I went there together in a spring wagon.

X Q. 146. Did Dr. Dunscomb return with you to Leadville?

A. He did not.

X Q. 147. Did you hold any consultation with him as to what was to be done in regard to this relocation?

A. Before I left, of course. We talked the matter over before I left

Aspen. The first idea was to employ some men and take possession of the mine and let them do the fighting. Dunscomb discountenanced that, so I left him there to look after the property. I went to Leadville to try to stop any sale, for, of course, if a sale had been made *bona fide* it would have been a harder thing to fight.

X Q. 148. When you went to Leadville did you have any idea that the sale was on foot?

A. Knowing the character of the men I supposed that was what they were after—to get some ready money.

X Q. 149. What amount of money did you pay to Crittenden and Adair?

A. I don't recollect positively. I paid store bills, and I think something like $50 for personal expenses.

X Q. 150. You paid the labor bills, too, did you?

95 A. Well, I paid what they claimed to have advanced for labor and store bills. In other words, reimbursed them for what they claimed as paid out for the mine for us.

X Q. 151. I will ask you whether the consideration stated in the deed, which is one thousand dollars, represents the amount of money that you paid them?

A. No, sir; it is like all mining deeds; shows more money on the face than parties.

X Q. 152. Now, then, can you state or can you approximate the amount of money that you actually paid?

A. I have already answered that question; besides that I paid them $50 and reimbursed them for what they expended on our account.

X Q. 153. You seem to remember very definitely that you paid them $50 in cash, but you don't remember the amount of the store bills?

A. No, I don't; because they would naturally be included in general accounts, $50 being a special payment, would not—different item. Virtually the $50 was what I paid them to give the deed.

X Q. 154. And you paid Johnston enough money to get home on?

A. Yes, sir.

X Q. 155. And he afterwards wrote you for more money on the settlement?

A. I recollect something about a letter from him. Whether I got it or whether somebody else got it I don't recollect.

X Q. 156. Then he did claim that you were owing him more money on settlement?

96 A. I think that he claimed he was entitled to more money, although I told him legally he was entitled to nothing; not even an interest in the property.

X Q. 157. Did you at Leadville ask him for a deed of any interest in the J. C. Johnston location?

A. I did not. That is where I was weak.

X Q. 158. Is it not a fact that you drew up a deed and asked him to sign it, which he refused?

A. I did not.

X Q. 159. You say that you have the impression that Johnston

turned over to you the location certificate of the J. C. Johnston claim?

A. That is my recollection of it. I couldn't say positively.

X Q. 160. Do you know what you did with it?

A. I do not.

X Q. 161. Did you ever exhibit it to any one?

A. I don't recollect.

X Q. 162. When you or Seaver made this sale in October, 1880, of an undivided one-eighth interest in the J. C. Johnston to Mr. Oburn did you state to Mr. Oburn or to any one in his behalf anything about the location or the location certificate of the J. C. Johnston?

A. I don't recollect.

X Q. 163. Were you present when that sale was made?

A. I think I was.

X Q. 164. You think you were?

A. Yes, sir.

X Q. 165. Did you sign a guarantee of title of that undivided one-eighth with Mr. Seaver?

97 A. I don't recollect whether I did or not.

X Q. 166. Do you know anything about two other suits that were brought in Pitkin county and two other adverses against the application for a patent of the Chatfield claim, the suits that I refer to being brought in behalf of the claimants of the Kansas City and the Smuggler No. 2 claims?

A. I don't recollect any.

X Q. 167. You don't recollect any such suits having been brought?

A. I have just answered that question.

X Q. 168. Do you know anything about the location of the Chatfield claim in conflict at Kansas City?

A. I do not. I have heard of such a claim, but I don't know anything about it.

X Q. 169. Do you know anything about the location of the Kansas City claim?

A. It was one of our original locations.

X Q. 170. Do you know where Kansas City was located with reference to the Smuggler No. 2?

A. On the opposite side of the small gulch, if I recollect right.

X Q. 171. Was it or was it not an adjoining claim to the Smuggler No. 2?

A. Now I can refresh my recollection about it. It may be that that was what they called an extension of the Smuggler No. 2. If that recollection is right my first answer is not, although I am not very positive in regard to those outside mines.

98 X Q. 172. How did you come to put on record the deed from Crittenden and Adair to you?

A. For protection.

X Q. 173. Was there anything in particular which caused you to put it on record at the time that you put it on record in December, 1880?

A. It is possible that I heard something about the revival of this pretended claim.

X Q. 174. Then was it before that time or after that time that you got your letter from Dr. Dunscomb?

A. I have already answered that I got that letter from Dr. Dunscomb late in the fall of 1880 or early winter of 1881.

X Q. 175. Do you know the date of the record of your deeds from Crittenden and Adair?

A. It was about the middle of December, 1880.

X Q. 176. Can you state now whether that was before or after you got your information from Dr. Dunscomb?

A. I have already answered that question.

X Q. 177. Can you answer that question more definitely than you have done?

A. I can answer it in no other way than what I have.

X Q. 178. I will ask you whether it is not a fact that the money which you and your partners received from Mr. Edward Brown in June or July, 1880, was money which you agreed to apply on payment of the debts of the Smuggler No. 2 mine?

A. Well, we did not agree to anything of the sort; we sold the interests in order to pay the debts.

99 X Q. 179. Was not that the agreement and understanding between you and Mr. Brown?

A. We probably told Mr. Brown that was the reason we wanted to sell—to pay the debts.

X Q. 180. Do you remember how much money you got on that sale?

A. I do not.

X Q. 181. Have you any recollection at all about the amount of money that you got?

A. I don't know what the amount was now.

X Q. 182. The deed expresses a consideration of $7,500. Did you receive that much?

A. No, sir; I did not.

X Q. 183. Did you receive as much as $500?

A. I don't recollect.

X Q. 184. Was there any agreement between you and your partner-, Seaver and Mr. Oburn, or any one else in his behalf—perhaps Mr. Holden—at the time that Seaver executed a deed of an eighth interest to Mr. Oburn, as to what should be done about the money received?

A. I don't recollect.

X Q. 185. Do you recollect how much money was received on the sale of that eighth?

A. I do not.

X Q. 186. If the deed states the consideration of one dollar for that sale, is that correct?

A. I should think not.

X Q. 187. Well, are you sure?

100 A. Well, of course, I am sure it was more than one dollar.

X Q. 188. Is it not a fact that there was an agreement on your part and on Mr. Seaver's part to apply the money from that sale to the payment of an indebtedness of the mine?

A. I don't recollect.

X Q. 189. As a matter of fact, did you or Mr. Seaver apply any of the proceeds of that sale to the payment of any debts of the property?

A. I don't recollect anything about it.

X Q. 190. Don't recollect what was done with the money?

A. No, sir.

X Q. 191. Has there been any agreement of any kind between yourself and the defendants *of* in this case or their attorneys concerning your testimony in the case?

A. I positively refused to give any testimony at all until my brother-in-law wrote me and my wife, saying that on my friends' account I ought to do it, because some of the principal men in the Standard Mining Company are by no means friends of mine, and I do not care to give any testimony in their aid.

X Q. 192. And you were only induced to give your testimony at the request of some friends of yours?

A. I was only induced to give my testimony by a letter received from my wife, one from my brother-in-law, and on account of my friendship to Mr. O. H. Dean.

JAMES C. ACHESON.

Subscribed and sworn to this 18th day of June, A. D. 1888, before me—

FREDERICK C. GOODWIN,
Notary Public.

[SEAL.]

101 EXHIBIT A.

Articles of agreement, made and entered into this seventh (7th) day of February, 1880, by and between J. C. Johnson and A. L. Rouze, parties of the first part, and J. C. Acheson, Jas. E. Seaver, and Edward Dunscomb, parties of the second part, witnesseth:

That the said parties of the first part in consideration of one dollar to them in hand paid the receipt of which is hereby acknowledged and certain acts to be hereafter done and carried out by said parties of the second part do hereby agree to pass title to said parties of the second part to one-half of all their interest in certain locations in the Roaring Fork country Gunnison county Colorado including the following-named lodes and locations Little Pearl, Badger Bay, Tip Top, John G. Lilly, Long Johnson, Detective and eleven more unnamed but located claims and partially described in a certain sketch of the camp made by said parties of the first part and given by them to said parties of the second part, and the said parties of the first part furthermore agree to devote their time and attention to prospecting and making locations and when deemed necessary working assessments on locations, and on all locations made by them during the season of 1880 to give to said parties of the second part a one-half interest in the same and to put their names jointly on all stakes set.

In consideration, of the foregoing the said parties of the second part hereby agree to pay said (Johnson & Rouze) parties of the first part on starting for Roaring Forks, two hundred and seventy-five dollars to pay for their outfit and one month's advance wages. To pay them thirty-seven & $\frac{50}{100}$ dollars each per month for expenses and to pay for all work to be done on claims in pushing de-
102 velopments and when deemed best in working assessments and when a claim is sold the said parties of the second part are first to retain out of the proceeds of such sale all monies laid out by them on said locations and then (if sale amounts to enough) to pay said parties of the first part two hundred dollars ($200) the balance of such proceeds then to be equally divided between said parties of the first and second parts, but if the said parties should sell the Little Pearl lode then they are to pay said parties of the first part on this one sale under same conditions as above the sum of fifteen hundred ($1,500) dollars instead of ($200) two hundred dollars as in all other sales, and said parties of the second part are to go on and develop the said Little Pearl lode, provided they can secure the co-operation of the rest of the owners of said lode.

And, it is furthermore agreed between said parties of the first part that the said parties of the second part shall have the charge and control over the bonding and selling of any and all claims now owned or to be owned hereafter by this company and if at any time said parties of the first part or either of them desire to dispose of any part or parcel of their or his interest in any of the properties owned by this company said parties of the second part are to have the first option on such parts or parcels and said parties of the first part agree to start for Roaring Forks whenever called on by said parties of the second part.

(Signed) JOHN C. JOHNSTON.
J. C. ACHESON.
JAS. E. SEAVER.
EDWARD DUNSCOMB.

Copy made of original by E. Dunscomb.

103 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Frederick C. Goodwin, a notary public in and for the county of Cook, in the State aforesaid, do hereby certify that the foregoing deposition of James C. Acheson was taken before me at the time and place therein specified, pursuant to stipulation hereto attached, by consent of counsel made a part of this record; that the parties to the said cause were present at the taking of the same, complainant by his counsel, Charles S. Wilson, Esq., and defendants by their counsel, Charles I. Thomson, Esq., as therein appears; that before deposing the said James C. Acheson was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the cause now pending in the United States circuit court for the district of Colorado, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City *et al.* are de-

fendants; that said deposition was reduced to writing from said James C. Acheson's statements and the same duly subscribed and sworn to by him, as therein appears.

And I do further certify that I am neither attorney nor of counsel for any of the parties in said deposition or caption named, and am in nowise interested in the result of said cause.

In testimony whereof I have hereunto set my hand and notarial seal this 18th day of June, A. D. 1888.

FREDERICK C. GOODWIN,
[SEAL.] *Notary Public.*

Notary fees for writing and certifying deposition, $25.00, paid by defendants.

FREDERICK C. GOODWIN,
Notary Public.

104 (Endorsed:) No. 2244. United States circuit court, district of Colorado. In chancery. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Deposition of James C. Acheson, taken before me, Frederick C. Goodwin, notary public, for defendants. Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

And the deposition of Ed. F. Brown on behalf of defendants is in words and figures as follows, to wit:

Deposition Ed. F. Brown Behalf Defendants.

Deposition of a witness to be read in evidence in behalf of the Standard Mining Company of Kansas City in a certain cause now depending in the circuit court of the United States in and for the district of Colorado wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City *et al.* are defendants, taken before me, pursuant to a verbal agreement and stipulation in that behalf made between C. S. Wilson, solicitor for complainant, and Charles I. Thomson, solicitor for the *the* Standard Mining Company of Kansas City, said deposition being taken on the 11th day of July, A. D. 1888, and said G. S. Wilson appearing in behalf of the complainant and Charles I. Thomson appearing in behalf of the Standard Mining Company of Kansas City.

ED. F. BROWN, a witness of lawful age, being first duly sworn according to law, testified as follows:

105 Direct examination by C. I. THOMSON:

Q. What is your name, age, residence, and occupation?

A. Ed. F. Brown; forty-six years old; Aspen, and manager of the Johnson mine.

Q. What business relation do you have to the defendant The Standard Mining Company of Kansas City?

A. I am their manager and agent in Colorado.

Q. Did you ever know the Smuggler 2 mining claim in Roaring Fork mining district, Pitkin county, Colorado?

—. I did.

Q. When did you know it?

A. In the year 1880.

Q. Were you ever interested in it?

A. I was.

Q. When did you become interested in it and how?

A. I purchased an undivided one-twelfth of three-fourths.

Q. When did you make that purchase and from whom?

A. I purchased it from J. C. Acheson, who had a power of attorney to act for Mr. Dunscomb and Seaver and their wives and J. C. Johnson, and one or two other names that I disremember.

Q. Well, when?

A. July 6th, 1880; and back of that power of attorney there was a grub-stake contract, under which these parties were working together as a company.

Q. When did you first see the Smuggler 2 claim, as near as you can recollect?

A. I do not remember; some time that fall of 1880.

Q. Who, if you recollect, was on the claim when you first saw it?

A. I don't recollect. An Irishman took me up there. Johnson was not here at the time.

Q. Mr. Brown, I will show you this paper and ask you if
106 you ever saw that before. (Paper handed the witness.)

A. I have.

Q. What does that paper purport to be?

A. The location certificate of the J. C. Johnston lode, under date of the fourth day of August, 1880.

Q. By whom does that certificate purport to be made?

Counsel for complainant objected because the certificate shows for itself.

A. John C. Johnston, Jos. W. Adair, and Geo. Alex. Crittenden are the locators in the body of the certificate.

Q. By whom does it purport to be signed?

Counsel for complainant objected for the same reasons.

A. John C. Johnston and G. A. Crittenden, with a blank between the names evidently for another signature.

Q. What endorsement is there on the back of it?

Counsel for complainant objected for the same reasons.

A. Location certificate on the J. C. Johnston Lode mining claim of Johnston & Co., in Roaring Forks mining district, Gunnison county, State of Colorado. The blank for the filing of this is not completed.

Q. It don't purport to have been recorded?

A. No.

Q. When and where did you first see this paper?

A. Some time in December, 1880.
Q. Where did you see it?
A. At Kansas City, Missouri.
Q. How did it happen that you saw it at that time and place?
A. Having purchased this interest of those parties, I heard there had been trouble about the location, but I was assured by all
107 the parties in interest that I could see that some time in August that difference had been settled amicably and with a thorough understanding on all sides, but some time near the middle of December Mr. Geo. A. Crittenden, a purported signer of that paper, came to my office and asked me if I was not an owner in the Smugger 2. I told him that I was. He informed me that the J. C. Johnston location had been revived, and that I must look out for the Colorado fellows, as he expressed it; that they were going to apply for a patent under a manufactured location; and Mr. Acheson being in town, either at that time or soon after, I sent for him and asked him what he meant by allowing such proceedings to go on after he had told me he had settled all the difficulty and had arranged everything amicably in August. Thereupon he stated to me that——

Counsel for complainant objected because the testimony was hearsay.

A. (continued). He informed me he had made a settlement in August, as he had stated before; that he had paid Mr. Chatfield and Crittenden and Johnston——

Counsel for complainant objected because it is hearsay.

A. (continued). He said Chatfield had advanced them groceries or something of that kind—that is my recollection of it—and that Mr. Johnston had surrendered this location certificate of the J. C. Johnston mine, and thereupon he showed me this certificate which he claimed Johnston had surrendered to him and a deed for the one-half interest that should have been in Crittenden and Adair's name to him.

Counsel for complainant moves to strike out this testimony of the witness as hearsay.

108 Q. Now, Mr. Brown, do you say that this is the identical certificate he showed you?
A. That is the certificate he showed me.
Q. When did you first hear of the J. C. Johnston claim?
A. I think that was the first. I didn't inquire the name of their location, and didn't pay much attention to it after I heard it was fixed.
—. When did you first hear there had been trouble with the location of the Smuggler 2?
A. I think some time in August or possibly in September; maybe it was later. I don't remember.
Q. What, if anything, had you heard of such thing at the time you purchased your interest in the Smuggler 2?

A. There was nothing of that kind at the time. Smuggler 2, on July 6th, was a mining claim that was properly located and had mineral in place and I was shown some of the mineral at the time I purchased the interest.

Q. Where was it that Crittenden told you what you have stated?

A. At Kansas City, Missouri.

Cross-examination by C. S. WILSON:

Q. Do you remember, Mr. Brown, the amount of the purchase price you paid for your interest in the Smuggler 2?

A. Yes, sir.

Q. What was the amount?

A. Now, I cannot remember the exact amount. There were some other matters I paid. I credited Acheson an amount and I paid $538 cash.

Q. You gave five hundred dollars in cash and credited Mr. Acheson for moneys he owed you?

A. Yes, sir.

Q. Do you know what was done with the money you paid Acheson?

A. I couldn't answer that.

109 Q. What application was to be made of the money you paid Acheson if there was any agreement on that score?

A. He was to pay the pay-roll over here and some bills that were outstanding.

Q. That was July 6th, 1880?

A. Yes, sir.

Q. And where was this transaction consummated?

A. At Buena Vista.

Q. The deed was executed there?

A. Yes, sir.

Q. And you were there when it was executed?

A. Yes, sir.

Q. And paid him the money there at the time?

A. Yes, sir.

Q. Immediately after that where did he go, if you know?

A. He started for Aspen.

Q. Do you know what he did with the money?

A. It would hardly be possible for me to answer that.

Q. I will ask you whether as a matter of fact he did pay the bills here as he agreed to.

A. I cannot answer that.

Q. You don't know?

A. I do not from my own knowledge.

Q. Do you from any other source?

A. I have seen receipts for some of the indebtedness.

Q. Receipts to Acheson?

A. I couldn't tell that. I don't remember whether they were to the company or to one person.

Q. I will ask you if it is not a fact that instead of paying these

bills as he agreed to he didn't squander a large amount of the money.

A. I don't know anything about that.

Q. Did he state to you at that time the amount of the pay-rolls and for other supplies they had incurred?

A. I don't remember. It appears to me he did. I don't remember the amount.

Q. How did that compare with the amount of cash you gave him?

A. My recollection is that fixed it to the first of July.

110 Q. That was enough to pay the indebtedness?

—. I think so, and I told him if they had mineral in place that would do for that year. I suggested that if that would clear them up they better quit work for that year; so it runs in my mind very clearly it must have settled the indebtedness.

Q. You don't know of your own knowledge whether he paid all of these bills and settled up?

A. O, no.

Q. You say you first heard of the trouble in August or September. How did you hear of it?

—. Mr. Acheson informed me they were behind in payments and I went with him to see Mr. Holden, to see if he would take an interest and give him money enough to settle his indebtedness up to that time.

Q. Now, was this before or after the transaction between Crittenden, Adair, and Acheson at Leadville?

A. It was after.

Q. And at that time he wanted money to settle up the business?

A. To settle up the debts on Smuggler No. 2.

Q. What debts were those? When were they incurred?

A. I don't remember the debts, but it was the indebtedness that had been incurred since the first of July.

Q. How much money did he want at that time from you or Mr. Holden for that purpose?

A. It was from Mr. Holden he wanted the money and not from me. It appears to me it was a thousand or fifteen hundred dollars. I don't remember the amount.

Q. And at that time did he get the money from Mr. Holden?

A. I suppose he did.

Q. Did he get that as a loan or by sale of another interest?

A. By the sale of another interest.

111 Q. Now, do you know who was in possession of the premises in August?

A. Not in August, in September they were.

Q. Was any work being done in August?

A. I don't know. I was not here in August.

Q. Did this money which he got from Mr. Holden on this sale go to pay debts, or was it to go to pay debts incurred prior to August?

A. It was represented to us they were to pay debts incurred since the first of July. That was my understanding. I know I found

fault with him for continuing work after I furnished money to pay the debts and I found fault with him for incurring further indebtedness.

Q. At that time did you know any particular bills that were owing to any of the workmen or for supplies?

A. I did not. I saw some receipts, but I can't remember what they were for.

Q. Now, at the time Mr. Crittenden informed you of the revival of the J. C. Johnston location, when did you say that was?

A. Some time in December.

Q. Did he at that time state to you that they were proceeding to get a patent?

A. They were trying to get a patent, and he stated "the Colorado fellows"—that was the way he expressed it—had asked him to sign another deed for the half interest which was in his name and he refused to do so.

Q. He stated that?

A. Yes, sir.

Q. Do you know, as a matter of fact, he did sign such a deed?

A. I do not. I saw the deed he gave Mr. Acheson and told him to get it on record at once, and it was on record the 22nd day of December. That is the way I confirmed my dates.

112 Q. Did Mr. Acheson exhibit to you his deed from Crittenden and Adair at the same time he exhibited the location certificate?

A. He did.

Q. And thereupon you caused the deed from Crittenden and Adair to him to be recorded?

A. Yes, sir.

Q. Why did you not at the same time have the location certificate recorded?

A. Because Crittenden informed me they had revived the location certificate and had had it recorded.

Q. And you didn't consider it necessary to have it recorded the second time?

A. I considered it necessary to have the deed recorded; the parties from whom I bought owned any location that was made there and the deed was evidence of that.

Q. Now, is there anything in particular about this location certificate which causes you to remember the very paper?

A. Yes, sir.

Q. What is it?

A. This is a location certificate dated August 4th of the J. C. Johnston lode, and the location certificate now is the *the* J. C. Johnson without the "t," and I think that is dated the 24th day of August.

Q. Did you notice that at the time?

A. I think the J. C. Johnston mine patent came as the J. C. Johnson mine, and I never noticed that until I saw it on record.

Q. Now, at or before the time you saw this certificate and saw the

deed from Crittenden and Adair to Acheson, did you examine the other certificate which had been recorded?

A. I never saw it until in 1885.

By Mr. THOMSON:

Q. Did you ever see it at all?

A. No, sir; I don't believe I did.

113 Q. But you omitted to place the certificate on record with the deed from Adair and Crittenden to Acheson for the reason you were told the other certificate had been recorded?

A. Yes, sir; Crittenden told me they had renewed the location and had forwarded it for record, and also wanted him to make a second deed for his half interest, and that he would not do it, and when I came to take charge of the company I find it is the J. C. Johnson.

Q. Did Crittenden tell you he had been a party himself to the renewal of the J. C. Johnston?

A. He did not; I rather inferred to the contrary.

Q. Inferred he had not signed the certificate himself?

A. Yes, sir.

Q. Do you know why Adair did not sign the certificate?

A. I do not.

Q. Do you know where Adair is?

A. Dead, I understand.

Q. Do you know where Crittenden is?

A. I do not.

Q. Now, when Acheson made the settlement with Crittenden and Adair and took their deed and made the supposed settlement with J. C. Johnston, do you know what amount of money he paid?

A. He told me, but I don't remember.

Q. Do you know how he raised that money?

A. (After studying.) I do not.

Q. Do you know anything about the organization of the Fulton Mining Company?

A. I do not, except from information.

Q. Did you have anything to do with the bringing of certain suits in the United States courts on the part of the Smuggler claimants against the J. C. Johnston claimants in the spring of 1881?

A. I did.

114 Q. Were you at that time asserting your interest in the Smuggler 2 by virtue of the deed which you have testified about?

A. I was.

Q. Do you know what suits those were, who the parties were to them?

A. Yes, sir.

Q. Who were the parties plaintiff in those two suits?

A. Mr. Oburn, of Kansas City, myself, and I think a suit was brought by Mr. Dean, of Kansas City.

Q. You don't mean a separate suit?

A. I think Mr. Dean's was a separate suit.

Q. Do you know what was the occasion of his bringing a separate suit?

A. It was for some fractional interest that would be left over and above Acheson's deeds to Holden and myself. I think it was brought as the attorney for Acheson. I don't remember about that suit particularly.

Q. Did you take any part in the negotiations for settlement of these suits and in the settlement itself?

A. I did not personally; I gave Mr. Holden a power of attorney to make settlement.

Q. Do you know what the terms of settlement were?

A. I was given my full claim in stock of the Fulton Mining Company; my full proportion.

Q. That is, you got one-sixteenth of the stock?

A. Yes, sir.

Q. And Mr. Holden and the parties whom he represented, including yourself, got how much of the stock of the Fulton Mining Company, if you know?

A. I don't know of my own knowledge, only from hearsay.

Q. How much of an interest did Mr. Holden and all the parties whom he represented at that time have at the time the suits
115 were brought and settled in the Smuggler 2?

A. At the time of the bringing of the suits I think Mr. Holden had one-quarter and I had one-sixteenth, but he acquired some other interests, I think.

Q. Some other interests before or after the settlement?

A. I don't know. I was in New Mexico after the suits were instituted.

Q. Mr. Holden, I understand, got his first one-eighth from Mr. Seaver in September?

A. Yes, sir; when they wanted the money to settle the bills.

Q. Then if he had one-quarter at the time of the bringing of the suits, where did he get the other eighth, if you know?

A. I don't know.

Q. Do you know anything about Mr. Oburn having taken a deed from the Achesons in the spring of 1881 for all their interests in the property?

A. I do not.

—. Do you know whether the Achesons or either of them had any actual interest in these suits and in the recovery of the property?

A. They certainly did at the time I instituted my suit.

—. Referring to the institution of your suit, do you mean when the papers were filed in the court or when the adverse papers were filed in the land office?

A. Both times.

Q. It is alleged in one of these suits in which the parties plaintiffs are the two Achesons, J. C. Acheson and his wife, and O. H. Dean that the actual interest of Mr. Acheson or Mrs. Acheson at that time in Smuggler No. 2 was an undivided ten thirty-
116 seconds. Is that the interest they claimed at that time?

A. I don't know. I never saw the papers of that suit, and only know about it by looking at the record. I know nothing about the deeds?

Q. It further appears, Mr. Brown, that these two suits, which were brought on the same day, in May, 1881, in the United States court on behalf of the claimants of the Smuggler No. 2 against the claimants of the J. C. Johnston, have different parties plaintiff, the adverse suit having been commenced by yourself and Oburn and Acheson and the equity suit having been commenced by the two Achesons and Dean. Do you know how that happened?

A. I don't. After instituting the suit I was in New Mexico and Mr. Holden was managing the suits.

Q. Do you know anything about two other suits brought about the same time on behalf of the Kansas City and the Smuggler No. 2 against the claimants of the Chatfield, brought here in the State court?

A. I know there was such a suit instituted, because I paid my proportion of the legal expenses.

Q. And did you and your parties at that time have the same interests in the Kansas City or the Chatfield ground that you had in the Smuggler No. 2?

A. Yes, sir; I did. I don't know whether the other interests were the same.

Q. Do you know a man by the name of Hollister who appeared in one of the last suits?

A. I do not.

Q. Or whether he had any interest in the Smuggler No. 2 or the Kansas City?

A. I do not.

Q. Do you know a person by the name of Mame A. Underwood?

A. I do.

117 Q. Is that a man or woman?

A. It is a woman.

Q. Did she have any interest in the Smuggler No. 2 or the Kansas City at the time of the institution of the suits?

A. She did not at the time of the institution of my suit.

Q. Did she ever have any interest in the property?

A. I don't think she ever had an equitable interest.

Q. Did she ever have a legal interest?

A. I don't think she did. She had a deed for an interest, but I think the deeds had passed for all the interests before she obtained hers.

Q. Do you know who executed the deed to her?

A. I think it was Seaver; yes, I know it was Seaver.

Q. Do you know how it happened Mame A. Underwood was a party plaintiff to these suits or one of these suits in the State court?

A. I do not.

Q. Do you know, as a matter of fact, that Mr. Acheson and Mrs. Acheson in April, 1881, prior to the institution of these suits in the United States court, had made a quitclaim deed to all their right,

title, and interest in the Smuggler No. 2 and the J. C. Johnson to Mr. Oburn?

A. I don't know it of my own knowledge.

Q. But you do know, as a matter of fact, that Acheson, at the time the suits were brought, had some interest and was asserting an interest in the Smuggler No. 2?

A. Yes, sir. He was with me when I filed the adverse.

Q. Was it by virtue of some understanding between himself and Mr. Holden and other parties that he was to have an interest in that suit after having deeded his interest to Mr. Oburn?

A. I know nothing of his deeding all of his interest.

118 Q. Was there some trouble between himself, Mr. Holden, and his friends about that matter?

A. I don't know. I was absent in New Mexico and don't know anything of the details.

Q. Do you know the cause of Mr. Acheson's present grievance against Mr. Holden and others interested in the Standard Mining Company?

A. He has no grievance against me.

Q. Has he any against any members of the company?

A. I don't know that he has any.

Q. You don't know that he has any grievance against them?

A. On the contrary, I can show you letters of late date, in which he states he is glad Mr. Holden and myself maintained our position.

Q. At the time of the settlement did Acheson get anything out of it?

A. I think he got some money.

Q. How vigorously were these suits prosecuted?

A. They were prosecuted just as vigorously as our attorneys would bring them up.

Q. Wasn't anything done in court, was there, except to commence the suits and dismiss them afterwards?

A. I don't know; we paid $1,274.00 lawyers' fees outside of the land-office claim.

Q. Do you know what became of the stock of Messrs. Dunscomb and Seaver in the Fulton Mining Company?

A. Yes, sir.

Q. What became of that?

A. Mr. Seaver turned over quite a block of shares to the Bank of Kansas City.

Q. When was that?

A. In 1883 or 1884, to pay part of an indebtedness that he and Mr. Dunscomb owed the bank.

Q. On what basis, if you know, was the stock of the Fulton Mining Company issued to Mr. Seaver? What proportional in-

119 terest in the property did they represent?

A. He accepted a compromise with the Fulton Mining Company and took, I suppose, as much as he could get. I don't know the amount.

Q. Do you know on what basis Dunscomb settled with the Fulton Mining Company?

A. I do not.

Q. If he took one-third or more than one-third he got more than he would if he had stayed with you, didn't he?

A. I should think so.

Q. Do you know how Messrs. Thomson and Sayer got their interests in the Fulton Mining Company?

A. I don't. I think Mr. Thomson got some of his by purchase, as I noticed on the books.

Q. When was your stock issued to you in the Fulton Mining Company, Mr. Brown?

A. It never was, I believe.

Q. When was the stock issued that represented your one-sixteenth interest in the Smuggler No. 2?

A. It never was issued to me, except sixteen or thirty shares, I think.

Q. Was it issued to Mr. Holden?

A. It was issued to my wife.

Q. Do you remember the number of shares?

A. 6,250 shares, I think, or 6,220 to her and 30 to me. It was first issued to Holden; he made the settlement.

Q. Did you, at or before the bringing of these suits in the spring of *of* 1881, consult very fully with your attorneys, Messrs. Taylor & Ashton?

A. I did not.

Q. Who was it who laid the facts of your case before them?

A. I engaged Judge Wheat, of Leadville, to institute the suits first, and on account of delay with him and Mr. Holden I found fault and we changed to Taylor & Ashton.

120 Q. But you didn't lay the facts before Taylor & Ashton?

A. I did not.

Q. Did Mr. Holden do that?

A. I think we had them take it by telegraph.

Q. You first learned of the revival of the J. C. Johnston and the report that they were going to try to get a patent in December, 1880, and you instituted your proceedings to assert your claim, when?

A. I don't know. It was two or three days before the expiration of the time to file the adverse. I kept track of it when the advertisement was put in.

Q. Why did you not immediately in December, 1880, when you learned of this, attempt to take legal measures to assert your right?

A. It was hardly necessary when the Smuggler was recognized and the J. C. Johnston was not known in Aspen or any place else, and until I saw the advertisement there was no occasion for my instituting a suit.

Q. You preferred to test that question on the adverse?

A. Yes, sir.

Q. Notwithstanding the fact that after Mr. Acheson had taken a

deed from Crittenden and Adair, which was not on record and paid them for it, they made a deed to the Fulton Mining Company, which was placed on record before the Acheson deed, and thereby the Fulton Mining Company was claiming all the Johnston title?

A. I didn't find that out until we examined the record. The winter was rather a hard time to get around here.

Redirect examination by C. I. THOMSON:

Q. You stated in your cross-examination that the deed from Crittenden and Adair to Acheson was not recorded until about
121 December, 1880?

A. Yes, sir.

Q. State, if you know, what was the reason it was not recorded until that time.

A. Why, Acheson had supposed the J. C. Johnston location had been abandoned entirely; that Mr. Johnston had turned over the location certificate to him and that deed from Crittenden and Adair that I saw deeded; not only their interests in the J. C. Johnston lode, but all right and title they could have in the Smuggler 2 ground, and Mr. Johnston assured him they would go on working as the Smuggler 2, and did so.

ED. F. BROWNE.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, James B. Knoblock, a notary public in and for said county, do hereby certify that on the 11th day of July, A. D. 1888, pursuant to a stipulation in that behalf made in my presence between C. S. Wilson, solicitor for complainant herein, and Charles I. Thomson, solicitor for the Standard Mining Company of Kansas City, personally came Ed. F. Browne, a witness for said The Standard Mining Company of Kansas City; that said Ed. F. Browne was by me first duly sworn in said cause to testify the truth, the whole truth, and nothing but the truth therein; that his testimony was reduced to writing under my supervision and subscribed by said Ed. F. Brown, and that said deposition so taken and subscribed is herewith returned to said circuit court in and for the district of Colorado, according to law.

122 Witness my hand and notarial seal this sixteenth day of July, A. D. 1888.

[SEAL.] JAMES B. KNOBLOCK,
Notary Public.

My commission expires June 22, 1892.

(Endorsed:) No. 2244. In the circuit court. John C. Johnston, complainant, *v.* The Standard Mining Co. of Kansas City *et al.*, def'ts. Deposition of Ed. F. Browne for defendant-. Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

123 And the depositions of Isaac W. Chatfield, Daniel Sayer, C. E. Koch, and Edward Dunscome on behalf of defendants are in words and figures as follows, to wit:

Depositions J. W. Chatfield et al. Behalf Defendants.

Depositions of witnesses to be read in evidence in behalf of the Standard Mining Company of Kansas City in a certain cause now depending in the circuit court of the United States in and for the district of Colorado, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City *et al.* are defendants, taken before C. S. Wilson, a notary public in and for the county of Pitkin, in the State of Colorado, pursuant to a verbal stipulation and agreement in that behalf made between C. S. Wilson, solicitor of said complainant, and Charles I. Thomson, solicitor for the Standard Mining Company of Kansas City commencing on the 12th day of July, A. D. 1888, and continuing from day to day thereafter until the depositions of all of said witnesses were completed, said Charles I. Thomson appearing in behalf of the Standard Mining Company of Kansas City and C. S. Wilson appearing in behalf of said complainant.

I. W. CHATFIELD, a witness of lawful age, being first duly sworn according to law, testified as follows:

Direct examination by C. I. THOMSON:

124 Q. What is you name, age, residence, and occupation?

A. Isaac W. Chatfield; I am fifty-two years old; reside at Emma, Pitkin county, Colorado; I am mining a little, farming a little, and in the stock business.

Q. Are you acquainted with J. C. Johnston, the complainant in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since '72; I think that was the first I knew him; '72 or '3, I believe it was.

Q. Did you have any business transactions with him in the year 1880; if so, what was it?

A. Yes, sir; I bought a mine of him.

Q. What was the name of that mine?

A. The J. C. Johnston.

Q. Where was it located?

A. On Smuggler mountain, in Pitkin county, this State.

Q. When did Mr. Johnston see you in reference to that mine?

A. Some time in the fore part of August or September; I think it was then he came over.

Q. Where did he see you?

A. At the Windsor hotel, in Leadville; I think it was the Windsor hotel, Leadville, Colorado.

Q. You cannot fix the date exactly, can you?

A. No, sir.

Q. What took place between you at that time?

A. He told me he had a prospect in this country which he would like to dispose of.

Q. Did he give you the name of it?

A. Yes, sir.

Q. Well, what was it?

A. He told me he would like to sell me an interest in the J. C. Johnston mine.

Q. Were other mines mentioned?

A. Yes, sir; other prospects were mentioned; the J. C., the Lilly, and I don't recollect the others.

125 Q. What was the upshot of that conversation you had with him then?

A. We partially agreed, I believe, upon the price at that time, and I don't recollect whether I gave him any money at that time or not; then he went to Denver from there and made a bond or had a bond drawn for an interest in the Johnston and an interest in the other claims I have been speaking of.

Q. Mr. Chatfield, when did you next meet Mr. Johnston?

A. Some time about the middle of October.

Q. Where?

A. At my store in Leadville, I think.

Q. Well, sir, what took place at your store in Leadville?

A. I bought the mine of him.

Q. Which mine?

A. The J. C. Johnston. We then finally agreed upon the price and everything.

Q. Where was the sale of the J. C. Johnston to you finally consummated and the terms all agreed on?

A. I think in my store, if I recollect right, on Sixth street.

Q. At what town?

A. The town of Leadville.

Q. Well, where were the deeds drawn?

A. The deeds were drawn at your office—the office of Thomas & Sayer, Leadville.

Q. What talk was had in the office of Thomson & Sayer after you came up there to have the deeds drawn?

A. Well, I don't recollect; there was a good deal of talk, *pro* and *con*, between us.

Q. Do you recollect any of it?

A. Only this: that he made a deed to me of his entire interest in that mine with the partial understanding that he was to have a certain interest in the mine if certain things were done.

Q. Now, what did he tell you about the Smuggler 2, and where did he tell it to you?

126 A. He told me he had had some trouble with the Smuggler 2 folks, consisting of Seaver and Dr. Dunscomb, and that they had not complied with their contract, and he had located the J. C. Johnston.

Q. Where did he tell you this?

A. At my store.

Q. Now, state if the contract was drawn between you and Mr. Johnston at that time.

A. Yes, sir.

Q. Where was that contract drawn?

A. That contract was drawn by Mr. Sayer in Thomson & Sayer's office.

Q. Who was present when it was drawn?

A. Mr. Sayer and myself.

Q. Where was Mr. Johnston at that time?

A. I think he was at my store.

Q. Who informed Mr. Sayer of the terms of the contract so he could draw it?

A. I think I did.

Q. After it was drawn, after he had written it, what was done with it?

A. I think I took the contract and went to the store to see Mr. Johnston.

Q. Did Mr. Johnston sign that contract?

A. I think he did.

Q. Where did he sign it?

A. If I recollect right it was at the store, I think.

Q. How far was your store from Thomson & Sayer's office?

A. About six blocks and a half.

Q. I will ask you if this is the contract you have been testifying about (paper handed the witness).

A. Yes, sir.

Q. Whose signatures are appended to that contract?

A. Mine and J. C. Johnston's.

Q. State if you know whether Mr. Johnston read that contract before he signed it.

A. I think he did.

Q. Do you know why these erasures were made there?

A. Mr. Johnston objected to those lines here, if my recol-
127 lection serves me right, sir.

Q. In your conversation at that time or at any other time with Mr. Johnston, what was said about organizing a company or corporation on this mine?

A. I don't recollect.

Q. Was anything said?

A. I think not.

Q. How long were you and Mr. Johnston in our office when the deed was drawn, if you recollect?

A. I don't recollect.

Contract above referred to offered in evidence and marked "Exhibit A."

Cross-examination by C. S. WILSON:

Q. Mr. Chatfield, at the time that the bond was executed in which Johnston bonded to you a one-quarter interest in the J. C. Johnston mine and other properties, had you seen the properties?

A. No, sir.

Q. When did you first see the property?

A. I don't recollect whether I came over that fall or not or not until the next spring.

Q. Now, it appears from the bond and by your testimony that the first agreement between you and Mr. Johnston was for the sale and purchase of an interest in other properties beside the J. C. Johnston?

A. Yes, sir.

Q. I will ask you whether or not these properties were included in the deed when it was made?

—. I don't recollect, but it don't seem to me the Lily and the J. C. were included.

Q. What was the occasion for dropping them, if you remember?

A. I didn't consider them of any value.

Q. And did the purchase price in the deed correspond with the purchase price in the title bond?

A. I think so.

128 Q. Was the deed made in pursuance of the title bond, except as to those properties dropped out, according to the agreement in the title bond?

A. I don't understand you, Mr. Wilson.

Q. Do you remember the consideration in the title bond for the one-quarter interest in the J. C. Johnston and other mining claims was $1,200?

A. Yes, sir.

Q. Payable partly down and partly by a team and partly on monthly installments; was that the consideration?

A. Yes, sir.

Q. I will ask you whether that was the same consideration which was actually paid for the interest which you afterwards purchased in the J. C. Johnston.

A. Yes, sir.

Q. Was that purchase made by yourself wholly or made partly for the benefit of other persons?

A. It was made for myself.

Q. Wasn't Mr. W. J. Wilson interested equally with you in the purchase?

A. No, sir.

Q. Mr. Wilson became interested?

A. Yes, sir; I sold him an interest in it.

Q. When did you sell that interest to him?

A. I think in '81.

Q. Was there a deed made?

A. I don't recollect whether I made him a deed or not.

Q. Do you remember what he paid?

A. $600 or $625. I don't remember which.

Q. What he paid was half you paid and he got half the interest you got?

A. Yes, sir; I believe that was the way of it.

Q. Now, then, at the time of the execution of the deed from John-

ston to yourself, and when this contract was executed between you, was there any other papers made in the office of Messrs. Thomson & Sayer?

A. About three days afterwards, I think, I deeded a one-
129 eighth interest to Messrs. Thomson and Sayer, as near as I recollect.

Q. I will ask you, if that was a fact, what was the purpose and what was the consideration of that transfer to Thomson and Sayer?

A. It was this: they were to go on and perfect the title and make the fight for the property, then supposed to be in litigation with those parties, Dunscomb, Seaver, &c.

Q. This contract refers to the institution of certain legal proceedings by yourself, and states that, "in the event of the party of the first part" (meaning yourself) prevailing and succeeding in certain legal proceedings, about to be instituted and commenced by the party of the first part, for the vesting of the legal title in the party of the first part, against persons who claim adversely to him an interest in the following-described property, to wit, the lode, lead and mineral deposit known as and called the J. C. Johnston lode, situate", etc., "the said party of the first part covenants and agrees to convey to the party of the second part an undivided one-eighth ($\frac{1}{8}$) interest in the above-described lode, free and clear from all expenses of the litigation," etc. I will ask what legal proceedings you expected to institute at that time to vest the title in yourself.

A. Under the statements that Mr. Johnston made to us, we though- we had a pretty good fighting show to win the entire property from Seaver, Dunscomb, &c., and we would proceed and try and secure the title to the entire property, and for their work Thomson and Sayer were to have an eighth interest in the mine, and, after looking into the matter, we made up our minds we had no show to win the case in any manner, shape, or form and therefore dropped it.

130 Q. And the parties referred to as claiming adversely were the original parties of the Smuggler No. 2, Acheson, Dunscomb, and Seaver?

A. Yes, sir; as I understood it.

Q. Now, when was it, or about when, that the Fulton Mining Company was organized?

A. I have forgotten that, but I guess the certificate of incorporation would show that.

Q. About how long after this transaction at Leadville?

A. If I recollect right it was some time in 1881. I wouldn't be certain; I have forgotten.

Q. Now, do you remember who organized the Fulton Mining Company—who the incorporators were?

A. W. J. Wilson, Daniel Sayer, Charles I. Thomson—and I don't recollect whether Holden was in it or not—and myself.

Q. Did Dunscomb have anything to do with it?

A. Yes, sir; he was in it, if I recollect right, and was president of the company, if I recollect right.

Q. I will ask you what the understanding was about this eighth

which Messrs. Thomson and Sayer were to get for services; whether that eighth came out of the interest which you purchased of Johnston or whether it came out of the one-quarter which was claimed by the original locators, Acheson, Seaver, and Dunscomb. I understand you purchased one-quarter in pursuance of the bond.

A. I purchased the entire mine.

Q. You purchased his entire interest, you mean, on condition that if you prevailed against the adverse claimants he should receive one-eighth back?

A. Yes, sir.

Q. And Messrs. Thomson and Sayer were to receive an eighth. I want to know whether that eighth was contingent on this one-quarter being established in you or whether they were to get
131 that out of your interest, even if you lost the other one-quarter claimed by the claimants of the Smuggler No. 2?

A. They were to get it out of the entire mine.

Q. So that, in the event you had to give up the other quarter to the claimants of the Smuggler No. 2 and had to give or had given to Thomson and Sayer an eighth, that would leave to you only an eighth. Was that the understanding? You didn't have the entire mine in your control at that time, did you?

A. At that time? I don't recollect.

Q. Can you answer that question more definitely?

A. No.

Q. Now, when the Fulton Mining Company was organized the title to the J. C. Johnston mine was made over to the Fulton Mining Company, wasn't it?

A. I think it was, if I recollect right.

Q. The title at that time, as to that one-half to which you took Johnston's deed, was in yourself and Mr. Wilson, was it not?

A. I don't recollect what time I deeded that to Wilson.

Q. At any rate that half was made over to the Fulton Mining Company, was it not?

A. I don't recollect.

Q. Do you remember anything about the other half which had been relocated by Mr. Johnston's partners, Crittenden and Adair, whether or not the Fulton Mining Company took a deed for that interest?

A. I don't know whether that was deeded to the Fulton Mining Company or deeded to Acheson, Seaver, and Brown. I don't recollect.

Q. Wasn't it deeded twice, first to Acheson and then to the Fulton Mining Company?

A. I couldn't say.

Q. Did you yourself procure that deed from Crittenden and Adair to the Fulton Mining Company?

A. If I did I have forgotten all about it.

132 Q. If you saw the deed or a copy of it could you refresh your recollection, do you think?

A. My recollection was that Crittenden and Adair made the deed

to Brown, Seaver, &c., as near as I recollect, and I couldn't swear to that positively.

Q. Didn't the Fulton Mining Company have the legal title for the J. C. Johnston mine at the time they made the application for the patent? Didn't they have deeds from all the locators and parties in interest?

A. I suppose they did.

Q. But Messrs. Seaver and Brown didn't have anything to do with the Fulton Mining Company, did they?

A. I don't recollect how that was done and can't say.

Q. Now, then, in issuing stock to the several parties interested in the Fulton Mining Company do you remember what share of the stock was issued to yourself and to Messrs. Thomson and Sayer and what share was issued to Mr. Wilson—the proportionate number of shares, whether one-quarter or one-eighth, or what fractional part?

A. My recollection is I got one-eighth and Wilson one-eighth and Thomson and Sayer one-eighth; that is my recollection of it.

Q. That was out of the first issuing of stock?

A. Yes, sir; and there was a certain amount of stock set aside for working capital.

Q. Isn't it a fact that when the stock was issued you issued only one-half or 50,000 shares and left the other half unissued?

A. My recollection is I got an eighth, Wilson an eighth, and Thomson and Sayer an eighth, but I couldn't say positively.

Q. Do you recollect what Dunscomb got?

A. No, sir; I do not.

Q. Do you recollect how it came about that Dunscomb got any stock?

A. No; I couldn't say.

133 Q. Do you know whether he did get any stock?

A. Yes, sir; he got some stock.

Q. How about Seaver; did he get any?

A. I couldn't say whether he got any stock or not.

Q. Now, you say you found out that this title which you purchased from J. C. Johnston of the J. C. Johnston mine could not be maintained as against the claimants of the Smuggler No. 2; when did you first learn that?

A. I first learned it from Messrs. Thomson and Sayer and Dunscomb and Seaver and Acheson, and I don't know whether Brown ever said anything to me or not.

Q. Did you learn that before or after the organization of the Fulton Mining Company?

A. I think it was before the organization of the Fulton Mining Company?

Q. And it was for that reason Mr. Dunscomb was allowed to come in as a stockholder and incorporator?

A. No; I couldn't answer that way. As I understood it, Mr. Dunscomb was an absolute owner with Mr. Johnston, Mr. Seaver, and Mr. Acheson, and I don't know whether I knew anything about Mr. Brown at that time or not.

Q. Then, as a matter of fact, was any settlement made with Mr.

Dunscomb for any claim of his which was adverse with your claim under your purchase with Johnston?

A. I can't answer because I don't recollect the settlement with Dunscomb.

Q. I will ask you whether there was any fractional part of the title to the J. C. Johnston mine, which you purchased from J. C. Johnston, which was clear and uncontested.

A. I don't think there was any part of it clear, because we were expecting this contest and I drew the contract and gave
134 him an eighth interest in the mine, provided we made the fight.

Q. Isn't it a fact that all parties recognized Mr. Johnston's right to one-fourth of the property, whether it was called the Smuggler 2 or the J. C. Johnston?

A. No, sir; it is not.

Q. Are you sure about that?

A. I think so; yes, sir.

Q. Do you know on what ground anybody was contesting his right or title to that quarter which you first bonded of Johnston?

A. Well, I can't answer that, for I don't recollect enough about it.

Q. Isn't it a fact, Mr. Chatfield, that the only controversy between the claimants of the Smuggler 2 and Mr. Johnston was this: that when he relocated the Smuggler 2 and called it the J. C. Johnston, instead of taking to himself one-quarter interest in the Johnston he took and claimed one-half interest in that, and that the contest which was expected from the Smuggler 2 claimants was over this additional one-quarter interest which he had relocated in his own name?

A. No, sir; it was in the entire mine. If we secured the title to the entire mine he was to have an eighth interest in it.

Q. And how did you expect to secure the title to the entire mine when at the time you took his deed the title of the other half was in Mr. Acheson, or else in Messrs. Crittenden and Adair, who had located the J. C. Johnston together with Johnston? How did you expect to get the other half without any legal proceedings?

—. Well, we really didn't know how we were going to win the thing.

Q. But you expected to vest the whole title in yourself by certain legal proceedings?

A. Yes, sir.

Q. What was the nature of the proceedings? Was there to
135 be an application for a patent or some other proceedings?

A. It was to be a proceeding by law in some way to secure the title to the entire claim. I suppose, of course, we would want to make application for patent.

Q. Now, you never claimed to have purchased over half of the title from Mr. Johnston?

A. I got a deed from Mr. Johnston for the entire mine.

Q. Did you understand or did Mr. Johnston claim he owned over one-half of the property?

A. Yes, sir; that is my recollection.

Q. That he owned it all?

A. The deed included the entire mine, if I recollect right. Then the contract was drawn for this eighth, and goes on and states that he is to bear an equal proportion of the expenses of the entire business.

Q. I will ask you whether or not Johnston had anything to say or to do about the giving up of an eighth to Messrs. Thomson and Sayer for defending this title.

A. Yes, sir; he had something to say, but I don't recollect what it was now; we talked it over in a general way.

Q. What was the reason that this eighth interest which this contract says was to be given to Mr. Johnston on the vesting of this title in yourself was not given to him?

A. The reason was, as I have stated previous, we looked the matter up and saw that Mr. Johnston had no shadow of a ghost to succeed in securing the interest when these parties came and claimed their interests in the mine, Seaver, Acheson, Brown, Holden, and Dunscomb, and it was delivered to them if I recollect right.

136 Q. Do you mean to say for the entire interest or to the full extent of what they claimed was given to them?

A. Yes, sir.

Q. All the different parties?

A. Yes, sir; as near as I recollect, it was all given to them.

Q. At the time you made the settlement with them did you consult Mr. Johnston in any way?

A. No, sir; I don't think I did.

Q. You took the statements of the other men as against his statements—made up your mind they were telling the truth and he was not?

A. I took their statements to be correct after looking it up—not saying that Mr. Johnston told an untruth or anything of that kind.

Q. Did you settle with these parties all at the same time or about the same time?

A. I think so. If I recollect right, we did.

Q. Isn't it a fact you settled with two of the parties, Dunscomb and Seaver, without a suit being brought, but that the other parties had to bring suit to get their interest?

A. I don't recollect how that was, whether they brought suit or not.

Q. Do you remember anything about the terms of the settlement with Mr. Holden and his parties?

A. No; only I know what Wilson, Thomson, and Sayer got, and I think they got the balance, and, if I recollect right, I think the stock was issued to them and the settlement made.

Q. After all that stock was issued and these claims all settled was there any stock left in the treasury?

A. In the stock book?

Q. Yes, sir.

A. I think there was a certain portion left, but what portion I can't say.

137 Q. What was done with that stock?

A. I think it was divided up among the stockholders.

Q. Wasn't it divided up among the original incorporators according to their interests as they had designated them at the time of the first issuing of stock?

A. That I couldn't say, because I don't recollect.

Q. What demands, if any, did Mr. Johnson ever make upon you for his interest in that property?

A. I think, in 1882, at Littleton, he spoke to me and said he thought he ought to be entitled to his interest in the property; that we should have gone on and contested that case.

Q. What did you say to him?

—. If I recollect right, I told him we found we had no shadow of a ghost to maintain his case and it was divided up among the stockholders—in other words, among the claimants, Dunscomb, Seaver, Acheson, and Holden.

Q. Then this eighth interest which he was to have was divided up among them?

A. I think that was what I told him at that time in Littleton.

Q. As a matter of fact, it is true, however, isn't it, that the name of J. C. Johnston was continued and the property patented in that name and the title did finally vest in the Fulton Mining Company, which was your grantee?

A. Yes, sir; I think that is right.

Q. At the time of settling with these parties, Acheson, Dunscomb, and Seaver, and their grantees, or at any time, did you take their quitclaim deeds when you issued that stock?

A. I don't recollect.

Q. Did you ever have any other interview with Mr. Johnston in regard to the recovery of his eighth interest claimed or called

138 for by that contract?

A. Outside of that one in 1882?

Q. Yes, sir.

A. He spoke to me once or twice two or three years ago.

Q. Do you remember the conversation?

A. I do not.

Q. Was there any conversation with reference to the patent proceedings or the getting of the patent by the Fulton Mining Company?

A. Not that I recollect.

Q. Was there any talk about getting a patent to the J. C. Johnston at the time of the transaction in Leadville between you and Johnston and Thomson and Sayer?

A. Well, I don't recollect what that talk was.

Q. Was there any talk at that time about organizing a stock company at the time of the original transaction?

A. I don't recollect that there was; I don't think there was.

Q. Don't you recollect that something was said about Johnston's intention to go to Idaho or somewhere in the Northwest, and for that reason it was better to have his interest turned over to you for

the purpose of applying for the patent and the organization of the stock company?

A. I don't recollect such talk.

Q. Do you say there was not?

A. I don't recollect.

Q. Do you recollect Mr. Johnston did go?

A. I recollect he went away, but couldn't say where he went.

Q. I will ask you whether at one of these interviews between you and Johnston you didn't refer him to Messrs. Thomson and Sayer and tell him you couldn't do anything about it.

A. No, sir; I don't recollect anything about it now.

Q. And whether at one of these interviews you didn't de-
139 mand from him his share of the expenses of the mine?

A. I don't recollect demanding of him; no, sir.

Q. Didn't you state to him a certain amount he would owe on the expenses?

A. Not that I recollect of; no, sir.

Q. Didn't you, on several occasions, inform him that the patent had not been obtained, and that according to the contract he was not entitled to his interest unless you got the patent?

A. I don't recollect anything of that kind.

Q. Do you recollect how much of an interest was covered by that bond that you took from Johnston—how much interest in the Johnston mine was covered by it?

A. I think it was a quarter interest in the J. C. Johnston and covering other claims—the Lily, the Acheson, and some others.

Q. What did you understand the deed covered?

A. The entire mine, as I have told you, and I don't recollect that the J. C. or the Lily were in, because I didn't think them worth anything; they were simply prospect holes he had dug; he said one lay on Aspen mountain and one in Aspen gulch, and that was all I knew about them.

Q. Then if the deed covered the entire mine you were getting three-quarters of that mine, in addition to what the bond called for, and out of that three-quarters which you were getting for nothing—that is, if you paid the $1,200 for the original quarter under the bond—you were to deed back to Johnston an undivided eighth in case you succeeded in perfecting the title against the Smuggler 2 claimants?

A. Yes, sir; we were to give him one-eighth in case we won the entire mine.

Q. I wish you would state as fully as you recollect just what the conversation was between you and Johnston regarding the
140 controversy which existed between him and his colocators of the J. C. Johnston and original locators of the Smuggler 2—that is, Acheson, Seaver, and Dunscomb; what did he tell you about it?

A. As near as I recollect, Mr. Johnston told me they failed to comply with their contract and he relocated this property in his own name; that they had failed to comply with the contract in furnishing the necessary money for grub stake and to defray expenses.

Q. And the other parties satisfied you they had not so failed to comply with the contract for grub stake, and it was for that reason you complied with their request against the Johnston title?

A. Yes, sir.

Q. Did Mr. Johnston exhibit any papers to you at the time of your purchase, the location certificate, or anything of that kind?

A. I don't recollect positively, but think he did.

Q. What were the papers?

A. Just the location certificate.

Q. Do you recollect how that was signed?

A. No, sir; I don't.

Q. Did you know Mr. Geo. Crittenden?

A. I just knew him.

Q. Did you know Jos. W. Adair?

A. Yes, sir; I knew him.

Q. Did you know anything about their connection with the J. C. Johnston, or otherwise?

A. No, sir.

—. And you saw the location certificate of the J. C. Johnston mine?

A. I think so; I will not be positive.

Q. Now, were you acquainted with Acheson, Seaver, and Dunscomb at the time of this transaction between you and Johnston at Leadville?

A. No, sir.

Q. Didn't know them at all?

A. No, sir.

Q. How long had you known Johnston?

141 A. I became acquainted with him in '72, I believe.

Q. Did you know him intimately?

A. Just knew him as a neighbor at Littleton.

Q. Did he have your confidence?

A. I thought him a pretty good man.

Q. Considered him a man of his word?

A. I did.

Q. And an honest man?

A. Yes, sir.

Q. And Dunscomb, Seaver, and Acheson were strangers to you, were they?

A. Yes, sir; comparative strangers.

Q. Now, you say that Messrs. Thomson and Sayer were to have their eighth for their services in this litigation?

A. Yes, sir.

Q. But that so far as Dunscomb and Seaver was concerned there was no litigation, because the matter was settled. Is that correct?

A. I couldn't answer about Dunscomb, Seaver, and Acheson, because I don't know anything about that.

Q. Isn't it a fact that the claims of Dunscomb and Seaver were both settled by the issuing of stock without litigation at all?

A. Yes, sir; they were settled with the entire company at the same time, if I recollect right, when they came to Leadville.

Q. And isn't it a fact that the other claim of Acheson or his grantees were also settled without any litigation and without any consultation with Mr. Johnston further than the bringing of suits by the filing of complaints, and that there was no trial or anything of the kind, but that the suits were settled and dismissed?

A. I think they were settled and dismissed.

142 Q. When did you first learn, Mr. Chatfield, if you did learn, that Mr. Acheson had taken a deed from Mr. Crittenden and Adair of their interest in the J. C. Johnston mine?

A. I don't recollect.

Q. Don't you recollect that matter was talked over and it was settled some time before you made your purchase of J. C. Johnston; that the controversy was settled so far as Crittenden and Adair were concerned, and that Acheson paid them back what they were out in the matter for having furnished supplies and paid some of the labor, and that Acheson paid them back and something beside and took their deeds? Do you remember that?

A. No, sir; I do not.

Q. And you don't remember of the second deed which was made by the same parties to the Fulton Mining Company shortly after its organization?

A. No; I don't recollect that.

Q. How did it happen, Mr. Chatfield, that Mr. Johnston made a deed of his entire interest to you if it was a fact that he was to have an eighth interest on certain conditions? Why didn't he keep that eighth interest in his own name?

A. I couldn't answer that, for I have forgotten.

Q. Were you present when the title bond was drawn by General Brown in Denver?

A. No, sir; not that I recollect of at all.

Q. I will ask you, Mr. Chatfield, whether you recollect having seen the location certificate of the J. C. Johnston mine since it was exhibited to you in Leadville, if it was exhibited.

A. I don't recollect that I have ever seen it.

Q. Didn't you take the location certificate which he handed you at that time and send it to Gunnison for record?

A. I think not. I may have done so, but I don't recollect it.

143 Q. If you had never seen this property how did you come to purchase it?

A. On Mr. Johnston's word.

Q. How did Wilson come to purchase his interest of you?

A. Mr. Wilson and myself were in partnership in Leadville in several things, and, among the different things, in the city-hall building, and I told him I thought it was a pretty fair prospect and he was dealing in mines all the time since I had known him and buying different prospects, and I let him in on equal terms.

Q. Now, isn't it a fact you gave him his interest at about the same time, perhaps a day or two after, you got it from Johnston?

A. No, sir; it was some time afterwards, but I don't recollect what time, though.

Q. Do you know whether Wilson had been here and seen the mine before you made the purchase of Johnston?

A. I couldn't say. I don't know whether he had been here previous or not.

Q. Did he purchase the interest on your representation or on what he knew about it?

A. If I recollect right, he purchased on my representation.

Q. Was that a partnership deal?

A. Yes, sir; he bought the half interest and gave me the money for it.

Q. Didn't Johnston make a deed of all his interest in the Smuggler 2 to Thomson and Sayer when he deeded to you his interest in the Johnston?

A. I think he did, sir.

Q. Do you know what the purpose of that deed was?

A. Yes, sir; I do.

Q. What was it?

A. I think it was that in case he wanted to go back on any
144 part of the trade, inasmuch as he relocated the Johnston, we could go back and protect ourselves in the Smuggler 2; something of that kind, as near as I recollect.

Q. And did Messrs. Thomson and Sa[illegible] immediately thereafter, within a day or two, deed all of their interest in the Smuggler 2 to Wilson, reserving to themselves an eighth?

A. I don't recollect.

Q. Was there anything more than a verbal understanding between yourself and Messrs. Thomson and Sayer as to their getting an eighth interest in the property for legal services?

A. Yes, sir; I made them a deed to an eighth.

Q. At the same time?

A. No, sir; about three days afterwards; two or three days after the deed from Johnston.

Q. Do you know where that deed is?

A. No, sir.

Q. Was it ever recorded?

A. That I can't say.

Q. Did the deed recite it was for services?

A. I don't recollect.

Q. You don't remember the consideration stated in the deed?

A. No, sir; I simply deeded them an eighth.

Q. Did they ever perform the services?

Counsel for defendant (The Standard Mining Company of Kansas City) objects to the foregoing question for the reason that it is none of counsel's business whether Thomson and Sayer ever performed the services referred to or not.

A. No, sir; the case was not prosecuted, just as I stated before, for the reason that we saw there was not a ghost of a show to win it after seeing the parties.

Q. Who made the settlement, Mr. Chatfield? Did you have a hand in it?

A. I believe I was present at one of the settlements.

Q. Were Messrs. Thomson and Sayer present?

A. I think so; yes, sir.

145 Q. Mr. Wilson?

A. I think so; and Mr. Holden, I think, was present.

Q. The settlements, you think, were all made about the same time?

A. Yes, sir; if I recollect right; at Thomson and Sayer's office, in Leadville.

Q. When did you part with your interest in the Fulton Mining Company?

A. A little over two years ago, I think it was.

Q. You sold your stock?

A. Yes, sir.

Q. I will ask you what was your relation with the company at the time of this first interview or any of the interviews between you and Mr. Johnston with respect to the interest he claimed; whether you were an officer of the company.

A. At what time?

Q. The last interview.

A. I believe I was a director, if I recollect right.

Q. Were you manager and superintendent at that time?

A. No, sir.

Q. When did you have your last interview with Johnston?

A. I didn't have any interview, except Johnston spoke to me in Denver, and I don't recollect what was said. He got angry and we cut it short, and I went one way and he the other.

Q. Did he demand his interest at that time?

A. I don't recollect that he did.

Q. When was that?

A. About two or three years ago.

Q. Were you manager at that time?

A. No, sir.

Q. Were you a director?

A. I think so.

Q. During what years were you superintendent or manager of the mine?

A. In 1886, I think. I could tell by going to my memorandum book whether it was 1886 or 1885; maybe it was 1885.

Q. During the year 1885?

A. Yes, sir; I think so.

146 Q. And until Mr. Brown became superintendent?

A. Yes, sir.

Q. When did he come in?

A. In 1886 or 1855; I couldn't be positive which year.

Q. Then if this last interview between you and Johnston was two or three years ago, it is possible you were superintendent and manager at that time?

A. I think it was during the time my brother and some other parties had a lease on the property when we had the talk on the street, and I don't recollect what was said.

Q. Referring again to this transaction at Leadville, Mr. Chatfield, I will ask you whether during this conversation with respect to the merits of the two claims, the Smuggler 2 and the J. C. Johnston, and the circumstances of the relocation, &c., whether Messrs. Thomson and Sayer were present.

A. I don't recollect.

Q. Where did the conversation about that occur?

A. At my store, I think.

Q. And that was before the contract was signed and executed, was it?

A. I would not be certain.

Q. Were not Thomson and Sayer your attorneys at that time?

A. Yes, sir.

Q. Wouldn't you naturally have consulted them about a matter of that kind?

A. Yes, sir; and I think I did, but I don't recollect what was the tenor of that talk; yes, sir; I generally consulted with them.

Q. And laid all facts before them as you understood them from Johnston?

A. Yes, sir.

Q. What time of day was the deed and contract signed, if you know?

A. I couldn't say.

Q. Were you in their office about this business more than
147 once with Johnston?

A. Why, I must have been there more than once, but I couldn't answer now how often he was there.

Q. How long did the business take in their office?

A. I don't recollect how long it did take.

Q. Did it take half a day?

A. Why, no; I think not; not so long as that.

Q. Did you have the title bond recorded—the bond you first took from Johnston?

A. I don't recollect whether it was or not.

Redirect examination by C. I. THOMSON:

Q. Mr. Chatfield, you say you had a talk with Mr. Johnston in 1882?

A. Yes, sir.

Q. What, if any, opinion did he then express about the value of the property?

A. He said he didn't consider it worth much. We didn't any of us, as far as that is concerned, consider it worth but precious little.

Q. I will ask you what that is. (Paper handed the witness.)

A. A deed made the 15th day of October by Isaac W. Chatfield to Thomson and Sayer for a one-eighth interest in the J. C. Johnston.

Q. Is this the eighth interest you have been speaking about?

A. Yes, sir.

Q. I will ask you, Mr. Chatfield, who employed Thomson and Sayer in this matter.

A. I did.

Counsel for defendant offers in evidence the deed just exhibited to witness, which is marked "Exhibit B."

Recross-examination by C. S. WILSON:

Q. That consideration of $500 was not the actual consid-
148 eration, was it, Mr. Chatfield?

Mr. THOMSON: We will admit it was not the actual consideration—that is to say, we didn't pay $500 in cash.

Q. The consideration for the deed was what you have already stated?

A. Yes, sir.

Q. And this eighth interest which you deeded came out of the interest which was covered by the deed which you took from J. C. Johnston?

A. Yes, sir; covered by the deed to the entire mine, and in case we won the entire mine he was to have an eighth interest back.

Q. And you were to have the balance?

A. Yes, sir.

ISAAC W. CHATFIELD.

EXHIBIT A.

Memorandum of an agreement made and entered into this 12th day of October A. D. 1880, by and between I. W. Chatfield of the city of Leadville, county of Lake and State of Colorado party of the first part and J. C. Johnston of the same place party of the second part witnesseth:

The party of the first part for and in consineration of the sum of one dollar to him in hand paid, and for other good and valuable considerations to him moving from the party of the second part, doth hereby covenant and agree to and with the said party of the second part, that in the event of the party of the first part prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part, against persons who
149 claim adversely to him an interest in the following-described property to wit: The lode lead and mineral deposit known as and called the J. C. Johnston lode, situate lying and being in the Roaring Forks mining district Gunnison county State of Colorado. That the party of the first part upon so acquiring the title legal and equitable to the said mine by means of the legal proceedings so about to be commenced doth hereby covenant and agree to and with the said party of the second part to convey to the said party of the second part an undivided one-eight- ($\frac{1}{8}$) interest in and to the said above-described lode, which shall be free and clear from all expense incidental to the litigation incident to said contemplated suit.

And the party of the second part for and in consideration of the covenants and agreements to be kept and performed as hereinbefore mentioned doth covenant and agree to and with the party of

the first part upon having or receiving the title to an undivided one-eighth ($\frac{1}{8}$) interest in and to the said lode, to pay an undivided one-eighth ($\frac{1}{8}$) part of the expenses which shall accrue in the development and opening the said above-described lode.

In witness whereof the parties hereto have hereunto subscribed their names and affixed their seals on the day and date first hereinabove written.

ISAAC W. CHATFIELD. [L. S.]
JOHN C. JOHNSTON. [L. S.]

STATE OF COLORADO, } ss:
County of Lake, }

I, Daniel Sayer, a notary public in and for said county, in the State aforesaid, do hereby certify that Isaac W. Chatfield and
150 John C. Johnston, personally known to me to be the persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of October, A. D. 1880.

——— ———,
Notary Public.

(Indorsed:) 2244. Agreement. I. W. Chatfield with J. C. Johnston. Exhibit A. Left with clerk Apr. 5, 1888.

EXHIBIT B.

Quitclaim Deed.

This deed, made this 15th day of October in the year of our Lord one thousand eight hundred and eighty between I. W. Chatfield of the county of Lake and State of Colorado, of the first part, and Charles I. Thomson and Daniel Sayer of the county of Lake and State of Colorado, of the second part: witnesseth,

That the said party of the first part, for and in consideration of the sum of five hundred ($500.00) dollars to the said party of the first part, in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have remised, released, sold, conveyed and quitclaimed, and by these presents do remise, sell, convey and quitclaim unto the said parties of the second part, their heirs and assigns forever, all the right,
151 title, interest, claim and demand, which the said party of the first part has in and to the following-described real estate situate, lying and being in the county of Gunnison and State of Colorado, to wit:

An undivided one-eighth ($\frac{1}{8}$) interest in and to that certain lode lead ledge vein claim and mineral deposit known as *an* and called the J. C. Johnston lode, situate lying and being in the Roaring Forks mining district, in the county of Gunnison and State of Colo-

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[SEAL.]

I, S. W. Dwight, a notary public in and for said county, in the State aforesaid, do hereby certify that I. W. Chatfield, who is
152 personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of October, A. D. 1880.

[SEAL.] S. W. DWIGHT,
Notary Public.

(Indorsed:) Quitclaim deed. Exhibit B. Isaac W. Chatfield, Charles I. Thomson, and Daniel Sayer.

DANIEL SAYER, a witness of lawful age, being first duly sworn according to law, testified as follows:

Direct examination by C. I. THOMSON:

Q. Mr. Sayer, you have already testified in this case, have you not?

A. I have.

Q. I will ask you, Mr. Sayer, what you know about the finding of a paper purporting to be the location certificate of the J. C. Johnston Lode mining claim.

A. I received a letter from Mr. Holden requesting me to apply to Taylor & Ashton for the location certificate of the J. C. Johnston mine. I went to the office of Taylor and Ashton and they were both absent, and I showed the clerk the letter and he said he would endeavor to look it up, and I suggested I would remain
153 there and I did and he instituted search, and there was a large case of pigeon-holes marked "Clients' papers." He looked through some and I others. I found under the head of

* ~~And it mutually agreed that at the time of the ensealing and delivery of these presents that all the title which appears of record in the name of J. C. Johnston or John C. Johnston is already vested the said I. W. Chatfield, and the suit about to be brought by said Chatfield is for the recovery of a portion of the lode which does not appear on the record in the name of said Johnston~~

~~[illegible] signed, sealed, and delivered~~ the same as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of October, A. D. 1880.

____ ____,
Notary Public.

(Indorsed:) 2244. Agreement. I. W. Chatfield with J. C. Johnston. Exhibit A. Left with clerk Apr. 5, 1888.

EXHIBIT B.

Quitclaim Deed.

This deed, made this 15th day of October in the year of our Lord one thousand eight hundred and eighty between I. W. Chatfield of the county of Lake and State of Colorado, of the first part, and Charles I. Thomson and Daniel Sayer of the county of Lake and State of Colorado, of the second part: witnesseth,

That the said party of the first part, for and in consideration of the sum of five hundred ($500.00) dollars to the said party of the first part, in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have remised, released, sold, conveyed and quitclaimed, and by these presents do remise, sell, convey and quitclaim unto the said parties of the second part, their heirs and assigns forever, all the right,
151 title, interest, claim and demand, which the said party of the first part has in and to the following-described real estate situate, lying and being in the county of Gunnison and State of Colorado, to wit:

An undivided one-eighth (1/8) interest in and to that certain lode lead ledge vein claim and mineral deposit known as *an* and called the J. C. Johnston lode, situate lying and being in the Roaring Forks mining district, in the county of Gunnison and State of Colo-

rado. For a more full and particular description of the same reference is hereby made to the location certificate thereof as the same appears of record in the office of the clerk and recorder of said Gunnison county.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said parties of the second part, their heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of—

ISAAC W. CHATFIELD. [SEAL.]

STATE OF COLORADO, } ss:
Lake County, }

I, S. W. Dwight, a notary public in and for said county, in the State aforesaid, do hereby certify that I. W. Chatfield, who is
152 personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of October, A. D. 1880.

[SEAL.] S. W. DWIGHT,
Notary Public.

(Indorsed:) Quitclaim deed. Exhibit B. Isaac W. Chatfield, Charles I. Thomson, and Daniel Sayer.

DANIEL SAYER, a witness of lawful age, being first duly sworn according to law, testified as follows:

Direct examination by C. I. THOMSON:

Q. Mr. Sayer, you have already testified in this case, have you not?

A. I have.

Q. I will ask you, Mr. Sayer, what you know about the finding of a paper purporting to be the location certificate of the J. C. Johnston Lode mining claim.

A. I received a letter from Mr. Holden requesting me to apply to Taylor & Ashton for the location certificate of the J. C. Johnston mine. I went to the office of Taylor and Ashton and they were both absent, and I showed the clerk the letter and he said he would endeavor to look it up, and I suggested I would remain
153 there and I did and he instituted search, and there was a large case of pigeon-holes marked "Clients' papers." He looked through some and I others. I found under the head of

"H" a large paper-folder marked "Holden and Acheson." I opened that and discovered the location certificate of the J. C. Johnston lode and the Smuggler 2 lode among some other papers. There were some deeds from Acheson and I don't remember all the papers.

Q. Will you describe the paper which purported to be the location certificate of the J. C. Johnston lode?

A. I made some memoranda; it had the name J. C. Johnston signed to it, and then there was a blank line and G. A. Crittenden was signed. The top part contained the name of J. C. Johnston and G. A. Crittenden and Adair. It was signed by John C. Johnston and then a blank line and then signed by G. A. Crittenden. It contained on the bottom of it some printed and some written matter, stating that the lode was located on the 4th day of August, 1880. The location certificate was not recorded.

Q. When did you see that paper last?

A. This afternoon—about two hours ago. It was attached to a stipulation and interrogatories and cross-interrogatories entitled in this case to be propounded to J. C. Acheson. I enclosed it in the envelope addressed to Frederick C. Goodwin, Esq., notary public, care Offield & Towle, Adams Express building, 183 to 189 Dearborn street, Chicago, Illinois.

Q. What other paper was attached to these interrogatories and cross-interrogatories?

A. There was a location certificate of the Smuggler 2 lode.

154 Q. Now, Mr. Sayer, have you had any conversation with the complainant, John C. Johnston, since you gave your testimony in this case before, with regard to the subject-matter of this case?

A. I had a conversation with him in a saloon in Denver, opposite the court-house, called the Court saloon.

Q. At what time?

A. It was the very afternoon upon which I gave my testimony.

Q. Who was present at that conversation?

—. Well, there was a bartender, Mr. Johnston and myself, and some other persons I didn't know.

Q. You may state what that conversation was.

A. We were having a general talk about the claim, and I suggested that I didn't suppose at the time we acquired our eighth interest in it it had any particular value, and Mr. Johnston remarked—I think his words were—"I didn't consider it worth a dam, either."

Counsel for complainant moves to strike out the answer to the last question because irrelevant.

A. (continued). In the course of the conversation I suggested he didn't have much interest in it and he admitted he had disposed of a part of his interest.

Counsel for complainant objects because the witness was prompted by the attorney.

Cross-examination by C. S. WILSON:

Q. You say, Mr. Sayer, you found the two location certificates in the office of Taylor & Ashton, at Leadville.
A. Yes, sir.
Q. Do you know who put them there?
A. No, sir.
Q. Do you know how long they had been there?
A. No, sir; I don't.
Q. I saw a letter from Taylor & Ashton, in which they admitted they had possession of them, and it was written several years before that.

155 Redirect examination by C. I. THOMSON:

Q. When did you find the location certificates you speak of in Taylor & Ashton's office?
A. On the 26th day of June last.

DANIEL SAYER.

The further examination of witnesses in this behalf was continued until Friday, the thirteenth day of July, A. D. 1888.

FRIDAY, *July* 13*th*, 1888.

Charles I. Thomson present as solicitor of the Standard Mining Company of Kansas City, and C. S. Wilson present as solicitor for complainant.

EDWARD DUNSCOMB, a witness of lawful age, being first duly sworn according to law, testified as follows:

Direct examination by C. I. THOMSON:

Q. What is your name?
A. Edward Dunscomb.
Q. How old are you?
A. About fifty years old.
Q. Your residence?
A. Glenwood Springs.
Q. Occupation?
A. Practicing physician and surgeon.
Q. Are you acquainted with the complainant in this case, John C. Johnston?
A. Yes, sir; I know Mr. Johnston.
Q. What business transaction did you, in connection with others, have with him about the spring of 1880?
156 A. Our business relations dated prior to that. It was, if I recollect right, in the winter of '79, and it was at that time I met Mr. Johnston at the Grand Central hotel at Denver, where I was stopping. He was in company with a man named Rouze, and the parties who were interested with me were a man named Acheson and a man named Seaver. The matter came up like this: Mr. Johnston stated that he had been over to a place called Ute town,

across a range called Independence range, during the summer or fall of 1879, and that he had located some properties there, and that, for a certain consideration, he would give us, Acheson, Seaver, and myself, a certain interest. Rouze was a friend of Johnston's, and Acheson and Seaver were my friends.

Q. Well, after he made that statement to you what did you do?

A. We made an arrangement with Mr. Johnston and it was like this: Mr. Johnston and Mr. Rouze were to receive a certain amount of grub, as we termed it in those days, and they were to receive an equal proportion of those claims with us; there were five of us at that time in the first arrangement; there were Johnston and Rouze and Acheson, Seaver, and myself; we were to give Mr. Johnston and Mr. Rouze somewheres between thirty-five and forty dollars per month; I have forgotten the exact amount, but they were to have thirty-five or forty dollars apiece per month—it was about that amount—and Johnston on his side and Mr. Rouze on his side were to work and we were to pay the men out of our own pockets, Seaver, Acheson, and myself, and we were to pay the men and furnish the grub and pay for all mining implements and supplies and foot all bills and pay these other men this amount of money, I have forgotten the exact amount, and we were to furnish their grub.

157 Well, I bought in Denver grub at Cornforths; Mr. Johnston was with me at the time; I didn't know exactly what grub was needed, and he went with me, and I paid for that out of my own pocket; we also went to a hardware store and bought a lot of mining implements and shipped them all to Buena Vista, and Mr. Johnston and Mr. Rouze also bought a tent, and Rouze and Johnston were to come to Buena Vista with the pack animals and my pony, which Johnston bought for me, and he was to meet us at Buena Vista, and we went up on the cars, and in a week or two they came along and camped on the cotton-wood at Buena Vista, and the jacks were there, and their animals I had purchased and the tent, and Mr. Johnston came over to my office and said he would like to have a little money and I gave him some, and he was to come over the next day to see about matters, but he didn't come over in the morning, but Rouze came over and said he couldn't find Johnston, and we hunted around and finally found him; Johnston had got off on a little *tare* and we got him back, and when he got sober Rouze made a talk and said he didn't want to go any further, that he was tired and didn't want to have anything more to do with it, and he dropped out, and then Johnston said he thought he ought to have the amount of money per month that Rouze was to get and we compromised the thing, and I think we gave Johnston seventy or seventy-five dollars per month, and part was to be paid to Johnston personally and part sent to his family at Littleton, and Seaver and Acheson came up there and we made up our minds it was the best thing, as Buena Vista was a hurrah town then and we thought there was too much drinking there for us and Seaver and Acheson to leave, and I went up to Twin Lakes, having bought more

158 provisions at John D. Best & Co.; he is now in Denver, I think; he had a store in Buena Vista at that time; we bought

more provisions at Twin Lakes, and this along in April, 1880, and after we got to Twin Lakes Johnston said it would be advisable for him to go over to Ute town and do some work on these mining claims, because they might get jumped, and Seaver said he would go with him; I gave Johnston between two and three hundred dollars in cash to pay for the work that must be done on the mining claims before I would come in; Seaver went up a piece and got scared at a mountain lion, or something, and came back to Twin Lakes, and Johnston went on over on snow shoes and we got one or two letter- from Johnston through men who came back, and Johnston said he was at work over here.

Seaver was always trying to put the bulk of the work on me whenever there was anything to be done or any money to be put up, and it was always so in other business, so he said to me finally in early May, I guess you better go over. I had a man named Josh. Dustan, who was afterwards a constable here, and I was to meet him and another man at Twin Lakes, and these two men and myself came over to this country, and I forget how many jacks and ponies we had, but several, and they were packed with provisions; but when we got to Seaton's ranch the men said the animals were packed so heavy I would have to give up my pony. I hadn't been travelling in the mountains, and I thought it was a pretty hard scheme. However, I gave up the pony, and they packed the pony and I walked and we finally got in here. Seaver remained at Twin Lakes; he had a pony and said he would come afterwards.

159 When I came over here Johnston had made arrangements about a cabin that was situate up from the Ute spring toward the mountain. He said he could buy the cabin from the man for sixty dollars, and he had said when I came in I would probably buy it, and when I came in I gave Johnston the $60 to pay for the cabin, and it was known afterwards as the Johnston cabin, and Mr. Johnston located the locations over here, I think, after he came in. I don't think that any properties had been located by him at the time. He stated he put up the names of Johnston, Seaver, Dunscomb, and Acheson. The names of Dunscomb, Seaver, and Acheson were put in our wives' names, because the only person who had any money was myself. The boys had all busted in the grain business. I had more money than I needed, and I went into the grain business and lost forty thousand dollars. However, I had some real estate that I sold that belonged to my wife in Kansas City, and I got sixty-five hundred dollars, I think, for it, and that was the money we were running this operation with. Well, Mr. Johnston was superintending the work and also working. We located two or three claims over here on Aspen mountain and two on Smuggler mountain; the two claims on Smuggler mountain Mr. Johnston located for us and put up our names; they were called the Smuggler 2 and the Kansas City; the Smuggler 2 and the Kansas City joined side lines; they are the identical properties now known as the J. C. Johnston and the Chatfield. We kept working them, but the claims on Aspen mountain we abandoned and kept on working the others. In the latter part of May we were getting

out of provisions; they were very high here and not many either, and Mr. Seaver got sick with pneumonia, and we made up our minds to go out with him and get provisions, and we took the pack train and Dustan went with us and Johnston went as far as High-
160 land, and it took us all day to get to Highland on account of Seaver's trouble; there Johnston left us, and I never saw him from that time until now, and Johnston said, You will never get that fellow out, and we had quite a time getting through to Beuna Vista, but we got there. During the time I was here I paid the money out for the work and I gave Johnston money and I was getting out of money. There was no bank here, and I wasn't personally a bank, and I was getting low in cash, and we needed the provisions and Seaver was sick, and we agreed to go out and finally got to Beuna Vista, and the other boys hadn't put up any money, and I was getting tired of putting up all the money, and Acheson came and we sold a small interest to Mr. Brown, an interest in the Smuggler 2 and Kansas City, and also in the claims over on Aspen mountain; although we had abandoned working them we hadn't abandoned the claims; we sold this to Brown for a certain amount of money, and that money was put into this property again to pay off the debts.

Q. What property?

A. In the Smuggler 2 and the Kansas City. Well, I hadn't been over in Buena Vista very long before I sent the pack train back; after Brown paid the money we paid for the provisions and Dunstan came back in charge of the pack train. I remained in Buena Vista and soon after the pack train came back Johnston hurt himself in the foot. I used to have letters every week or ten days asking me to return, and as I didn't see it was necessary to return as long as the work was going on I didn't come, and after he hurt himself then he wanted me to come and attend to that foot, but I didn't come.

I had heard during July, 1880, that there was something
161 wrong going on about the property, but I didn't pay much attention to it because I knew the location stakes would hold the property anyway and everybody knew I was interested in it, and finally Acheson came to Buena Vista and he said, "We must go; there is something wrong," and I said, "I have heard so," and he said, "We must take care of it now," and we hired a buckboard and pair of horses and drove into Aspen, and that was the first pair of horses that ever came into Aspen hitched to a buckboard, and one horse died and the other didn't get back for a long time and I had a lot of money to pay out for that. When we came in we found Johnston had left the day before; we found the property had been relocated by Johnston and that he claimed it as the J. C. Johnston, but he had not relocated the Kansas City. He had relocated the Smuggler 2 and called it the J. C. Johnston, the end and side lines of which were about the same. I found that the parties interested with him in the location had a man in charge and they threatened if we came up there there would be a shooting match and so we thought discretion the better part of valor and Mr. Acheson left the next day for Leadville to see Johnston. I stayed here.

Q. Where was Ute town?

A. Ute town was supposed to be the upper part of what is now called Aspen.

Q. What mining district was it in?

A. I forget the name of the mining district, but I know we sent our papers to Gunnison; that was the recording place then, but I forget the name of the mining district.

Q. Now, Doctor, how much did the provisions and implements you bought in Denver cost you?

162 A. Well, now, I think, as near as I can recollect, I paid out something like a hundred dollars for provisions and implements.

Q. How much did you pay out in Beuna Vista?

A. I think in Beuna Vista and Twin Lakes together, for feeding animals and provisions purchased, I paid out another hundred dollars or hundred and twenty-five.

Q. Can you say exactly how much cash you gave to Mr. Johnston when he started over the range?

A. It was somewhere between two and three hundred dollars.

Q. Had you given him any cash before that?

A. Yes, sir.

Q. Where?

A. At Beuna Vista; and I gave him money also down in Denver before we started.

Q. Do you remember how much?

A. No; I do not.

Q. You say you came in in April?

A. In May; the first week in May I think it was.

Q. What time did you return with Seaver?

A. I think it was the last part of May or early June.

Q. Can you fix the time?

A. No; I cannot.

Q. What did you do while here?

A. I stayed in the cabin there, and these men would go up to Smuggler mountain and I would do the cooking.

Q. When did Seaver come?

A. The latter part of May. It must have been the early part of June we went back.

Q. The latter part of May Seaver came?

A. Somewhere between the 15th and 20th.

Q. How long was he here before he got sick?

A. Two or three weeks.

Q. What did Seaver do while here?

A. He used to go and help on the mines.

163 Q. How much money did you pay Johnston while here at that time?

A. I don't recollect; but at times Johnston would want money and I would give it to him; I didn't want to give him too much because occasionally he would go to town and play cards and get on a tare; it wasn't any of my business what he did with his money, but he was directing the work and the men, and if he didn't come

back we couldn't see that they did their work, because there was no one to direct them and we were paying the three or four dollars a day to the men and giving them grub besides.

Q. How much, if any, money did you send to his family at Littleton?

A. I sent money, but I don't recollect how often; but I do recollect when I came in here in August——

Counsel for complainant objects to the question because it is leading and suggestive of the answer.

A. And found that the Smuggler 2 had been relocated; I said to Acheson——

Q. Never mind what you said to Acheson; tell how much money you sent to Johnston's family, if you know.

A. I sent to his wife, prior to coming in here, $25.

Q. At what time?

A. It must have been the latter part of July.

Q. Had you sent her money before that?

A. I think I had, but will not be certain as to the amount.

Q. What, if any, objection did Johnston ever make to you that you were not complying with the terms of your contract?

A. I don't know what objections the man ever made, except I didn't come over here, and he was running everything and I was there.

Q. Did he ever complain that you were not performing your contract?

164 A. No, sir; I don't recollect that he did; after he got out of provisions there was a bill run of several hundred dollars which I paid.

Q. When was the bill run?

A. Right after the provisions were out.

Q. What time with reference to your going with Seaver and coming back?

A. It was between those times.

Q. When did you pay that bill?

A. I paid that, together with another bill, in the fall of 1880.

Q. State whether or not you paid any bill when you came over in August.

A. Yes, sir. I did not personally pay this bill. Mr. Acheson remained here and I gave him the money.

Q. I mean when Acheson went to Leadville.

A. I went out with the team and he remained, and I gave him the money to pay the bills when he returned from Leadville after seeing Johnston. He said, "You take the team and I will remain, and you give me what money you have and I will take mine and pay the men off."

Q. How long after Johnston went to Leadville before he returned?

A. I think he went out and came back in about three or four days.

Q. Who run these bills here, amounting to several hundred dollars, that you afterwards paid?

A. They were made by the parties who succeeded or had charge of the properties when Mr. Johnston relocated it. When he relocated it he put a man in charge there, and I not only paid these bills, but I sent over here in the fall of 1880 $650 by Billy Koeh, who was then postmaster here, in cash.

Q. Is Mr. Koeh here now?

A. I don't know whether he is or not. He was postmaster here then and I knew him and I thought he was the most trustworthy person and I counted the money out to him and sent it over to pay the men.

165 Q. How many times did you send provisions?

A. I sent but once, but then they traded at the store and I paid the bills.

Q. Who traded here?

A. Mr. Johnston and the man Mr. Johnston put in charge when he located the property. When he gave up the property he said, "Here are these bills," and we paid them.

Q. How long did you remain here in August?

A. I don't think I stayed more than a week or ten days.

Q. Do you know what was done with the property after that—who had possession of it?

A. We worked the property to a certain extent. It was in our charge and some little work was done. I forget the man's name now who was there, and he came over to Buena Vista and then came to Leadville and got on a drunk, and I couldn't find him for three days and finally found him and I paid him off up there.

Q. Dr., when did you first hear that Mr. Johnston had made a deed of his interest in the Johnston to I. W. Chatfield?

A. I learned that some time in October or November, 1880.

Q. Do you remember how you learned it?

A. It was through some Kansas City source. I came down to Denver and had just heard about it and met you (meaning Mr. Thomson) at the Windsor hotel, and I thought you were the party at that time who was trying to do me up in that property, as we were not very good friends and hadn't been for some time, and I said to you at the Windsor, "I understand that Johnston has made a deed to Chatfield for the full interest that he has in that property. I don't care how much he deeds what belongs to him, but he can't deed more than belongs to him, and I understand you are trying to help him out."

Q. Will you state how it came a settlement was made?

166 A. You didn't seem to care to say much about it, and you said, "If you will come up to Leadville we may be able to fix or arrange this matter."

Q. Did you come to Leadville?

A. I did.

Q. When?

A. In December, 1880, I think.

Q. What took place there, Dr.?

A. Well, I came and saw you at your office and you said you would see Wilson and Chatfield, and we talked the thing over and arranged things satisfactory so I could get my interest, and I said at the time Mr. Seaver was indebted to me from our old partnership and I thought I ought to have a little more of the stock of the company when we formed it than Seaver did.

Q. Who suggested the forming of a company; how did that come about?

A. I think I suggested the formation of a company. I said I thought we could work the thing better in the form of a company than any other way, and suggested we have the thing surveyed and make an application for a patent, which was done.

Q. I will ask you what, if any, papers you laid before me showing the facts with regard to the location of the Smuggler 2 and your relations with J. C. Johnston. Now, did you inform Chatfield, Wilson, and the rest of us?

A. I furnished you the whole business; how I came here and my relations to Mr. Johnston, and I don't know that I showed you any papers, except possibly some letters I had from Johnston. I think the location certificate was sent to Gunnison. I don't know that I had that in my possession at that time. I know we had that recorded. I presume the location certificate will show for itself.

Q. Dr., I will ask you whether or not about the same time
167 the settlement was made with Seaver if Seaver was present.

A. He was present, and I got a little more of the stock for this reason: When I went into partnership in the grain business with Seaver we agreed to put in a certain amount of money into the business; he to put in the same as — did. Originally we agreed each should put in a certain amount into the business. We went into business and run on for about eighteen months and then broke up, and Seaver never did put in the same amount of money I did, and in the settlement I got a little more stock than he did. Originally the arrangement was that fifty thousand shares were to remain in the treasury as treasury stock, and afterwards Mr. Seaver was to get a certain amount of that, but out of the other fifty thousand shares he didn't get quite as much as I did.

Q. Do you remember how many shares you got?

A. I think I got about fourteen thousand shares of the original company stock.

Q. How much did you get in excess of what would have been your interest in the Smuggler 2?

A. I got two or three thousand shares more.

Q. Between whom was the arrangement made that you were to get that?

A. That was between Seaver and myself.

Q. That extra came out of his?

A. Yes, sir; that came out his stock.

Q. How much more stock do you recollect he was to get?

A. I don't recollect how much more he was to get, but he was to get something more out of the treasury stock. We called it treas-

ury stock because we put it one side and intended to sell that for development of the property.

168 Q. When you and Seaver had been settled with what interest in the Smuggler 2 of your parties remained outstanding and unsettled with?

A. There were Acheson and Holden and Mr. Brown and a man named Dean, to whom Acheson had sold an interest.

Q. I will ask you if these parties, except Brown, were interested at that time.

A. As near as I can recollect, I think Acheson had sold an interest in the property, not in the stock, because the company was not organized at that time. I think he sold an interest to Mr. Holden, and I forget whether Dean got an interest at that time or afterwards, but it was about that time.

Q. Do you recollect the circumstances of the settlement finally with them for the interests claimed?

A. Yes, sir; I do.

Q. What had they done?

A. They had sued us and were trying to prevent us getting our patent to the property, and this suit was pending and Holden was the agent of all these parties—Mr. Dean and Brown and a Mr. Chick and himself. We finally made a settlement with these parties, giving them something like forty thousand shares out of that treasury stock.

Q. I will ask you, Dr., if you know what was the reason they were not settled with before that time.

A. Well, we didn't think their claims were good; we thought they were claiming more than they actually ought to have.

Q. Couldn't agree on terms?

A. No, sir; they were claiming more, we thought, than they ought to have. The settlement took over a year or a year and a half; as near as I recollect, it was somewhere between one and two years before we did settle the thing. Mr. Holden came to Leadville

169 to the company's office and the settlement was made there—Mr. Holden representing all of these other parties. I think one reason why we gave them a little more than we thought they ought to have was because we didn't want any more lawsuits on the property.

Cross-examination by C. S. WILSON:

Q. Was this grub-stake contract reduced to writing, Dr.?

A. I think it was; yes, sir.

Q. Do you remember the terms of the contract according to the writing?

A. I don't recollect except what I have stated, except the interests and the amount of money to be paid; there were some other matters, but they were immaterial.

Q. As I understand, there were five originally interested in the grub stake.

A. Yes, sir.

Q. And you had equal shares?

A. Yes, sir.

Q. Isn't it a fact that under the contract Mr. Johnston and Mr. Rouze were to have a half interest and the other three were to have the other half?

A. I don't recollect exactly, but my impression is we were to have equal interests. The contract was reduced to writing and will show for itself. It was eight years ago, and I don't recollect any but the main facts about the matter.

Q. Isn't it also a fact that Mr. Acheson was also a silent partner, and that his interest was in the name of your wife and Silver's wife?

A. I don't recollect; it might have been so; he had an interest, however.

Q. Didn't you and your partners all give to Acheson a power of attorney to make sale of the property?

170 A. We gave him a power of attorney at one time—when he went to Leadville and thought he could make a sale; there was an offer for the property.

Q. You think the power of attorney was only given for a particular purpose at that time?

A. Yes, sir.

Q. Was that power of attorney afterwards revoked by any of you?

A. Yes, sir; I revoked it.

Q. What was the occasion?

A. He didn'*g* sell the property, and it was for that purpose we gave the power of attorney to sell the property in Leadville, and he didn't sell it and we revoked it.

Q. Now, when Mr. Rouze dropped out of the contract at Buena Vista what was his grievance, if he had any?

A. Well, he said, as near as I can recollect, he didn't want to go across the range. Acheson, Seaver, and myself had bought some property of Rouze at Maysville, Crees camp, and he had a lot of money, and he hadn't had any for some time before that, and he made up his mind when he got to Buena Vista that he wouldn't go. We had given him several hundred dollars for some interests in Maysville.

Q. Wasn't there some misunderstanding between you and Rouze about business matters?

A. No, sir.

Q. Dr., when he retired from the contract did he return to you any money you had advanced to him and Johnston?

A. I don't recollect that he did. I don't think he did.

Q. After he retired from the contract what disposition was made of Rouze's interest in the contract?

A. As near as I can recollect it, it reverted to us four; but Mr. Johnston was to receive a larger amount of money from us.

171 We were to receive a larger interest in the property, but Johnston was to receive more money from us per month.

Q. Was Johnston to get a part of Rouze's interest?

A. Yes, sir; he was to get a little more because we were to get a little more. He had a quarter.

Q. Do you remember how many pack animals were bought and what kind?

A. Ponies and jacks.

Q. Do you remember how many?

A. I don't recollect now. I think it was originally ten or twelve; somewhere along there.

Q. Do you remember the cost of these animals?

—. I couldn't tell you originally. I know I paid for them. I recollect the cost of my pony, because Mr. Johnston said he could get me a nice pony at Littleton for fifty dollars, and I gave him the fifty dollars to get it.

Q. Who bought the pack animals?

A. We did.

Q. Where?

A. Some at Denver and, I think, some at Buena Vista.

Q. How much money did you expend, in the first place, for the outfit at Denver and at Buena Vista and at Twin Lakes, if you bought any there; how much in cash?

A. That would be pretty hard to say. I was paying out money for hay and grain for the animals, and it is so long ago it would be a pretty hard matter, but it was several hundred dollars.

Q. Can you state how much money you gave Johnston and Rouze before Rouze dropped out?

A. I couldn't tell exactly.

Q. You gave him some cash?

A. Yes, sir.

Q. And had given him some in Denver?

A. Yes, sir.

Q. Was that to apply to their wages?

A. Yes, sir; on their wages and expenses both.

172 Q. Now, do I understand from you that Seaver and Johnston started to Twin Lakes and you remained?

A. No, sir; I went with Johnston, and Seaver returned and went back to Kansas City or Denver or remained at Buena Vista, and it was Johnston and myself who went to Twin Lakes together with the provisions and the pack animals, and Seaver didn't come until afterwards.

Q. And you went through with Johnston at that time?

A. I went to Twin Lakes with Johnston.

Q. How long afterwards did you get into Aspen?

A. Johnston and I waited until Seaver came down, and I think before Mr. Johnston went in over the range we must have remained there at Twin Lakes a week. I think it was about that time—possibly might have been ten days; it was some days, at any rate.

Q. You and Seaver went together?

A. No, sir; Johnston went over on snow-shoes; I gave him the money. Seaver was to go, but, as I say, he went up a piece and got frightened and came back, and Johnston went alone and Seaver came back to the Lakes, and then I came in with the pack train

and Seaver remained at the Lakes and didn't follow until a week or two after I got in.

Q. I will ask you what proportion of the original amount of the original money was furnished by you and what proportion by Acheson and Seaver, your partners.

—. I think, as far as that goes, I furnished about all that was furnished; Mr. Acheson had failed in business and Dunscomb and Seaver had failed. My wife had a piece of property in Kansas City, which I sold for about $6,000, and I took that money—Seaver did put up some—but the bulk of everything outside of the in-
173 terest sold to Brown I put up myself.

Q. You virtually carried the enterprise?

A. I virtually carried the enterprise; yes, sir.

Q. Now, you say that in the latter part of May or early June you were getting out of provisions, and that you and Seaver, who was sick, took the pack animals and started out?

A. Yes, sir; and we had one man, Dunstan, to drive the animals, and Johnston went as far as Highland.

Q. How many men were working on the property at that time?

A. As near as I can recollect, we had four or five men working over here on Smuggler mountain, on Smuggler 2, and I think one over here on Aspen mountain, together with Johnston; he was working, too.

Q. At that time were you owing any bills here in town?

A. No; not at that time, before we went out. We might have been owing a little to the workman, but I think not; I know I paid Dustan in Buena Vista.

Q. You were getting short of provisions and short of money and you concluded to go out?

A. We were short of provisions. I had some money, but I was getting tired of putting it all up, and when the suggestion came from Acheson and Seaver to sell an interest to Brown I said, All right; I thought a small interest sold to Brown would be all right.

Q. At the time you went out with Seaver had you made your location and filed a certificate on the Smuggler 2?

A. I think I took the certificate and sent it to Gunnison at that time.

Q. The location had been made?

A. Yes, sir; I think it had on the Smuggler and on the Kansas City; we had a man to survey them and we had a man over
174 here, and I paid him ten dollars a claim out of my own pocket.

Q. At the time you went out how long had Johnston and the men been working on the Smuggler 2?

A. He had worked the latter part of April some and during the month of May, and I left in June and he was working at the time I left.

Q. During that time you had paid the men wages?

A. Yes, sir.

Q. How often?

A. Whenever they wanted money. There was one young man

who located the Camp Bird, and he worked for us three or four weeks and then wanted his money and I gave it to him.

Q. You had no regular pay-roll?

A. Not in those days.

Q. How much money during that time did you pay to Johnston for wages?

A. I paid him whenever he wanted money.

Q. You don't recollect whether you paid him in full up to the time you went out?

A. I think the thing was like this: I think I may not have paid him every dol-ar I owed him and he asked me to send his wife some money.

Q. Where was Johnston's wife?

A. At Littleton.

Q. Did you send her money?

A. Yes, sir.

Q. When was that?

A. I sent her money. I couldn't exactly tell the time, but my recollection is I sent her money twice, some after going to Buena Vista and once during July.

Q. You think you sent $25 during July?

A. Yes, sir.

Q. Do you remember the amount of the other remittance?

A. I don't recollect.

Q. Was it as much as $25?

A. I don't recollect, but I do recollect the other, because I had just sent Mrs. Johnston the $25 when I came over here and found he had relocated the property, and I spoke about it to Acheson and I told him.

175 Q. You sent the pack animals back?

A. Yes, sir; every animal, except, perhaps, my own pony.

Q. Did you know whether they got here?

A. Yes, sir; because I got letters back from Johnston.

Q. What amount of provisions did you send?

A. Well, as near as I can recollect, I bought about one hundred and fifty or two hundred dollars' worth from John D. Best & Co.

Q. What were the provisions?

A. Bacon, flour, beans, and rice, and canned goods, and mining implements, and rope.

Q. And you say Johnston acknowledged the receipt of the provisions?

A. As near as I can recollect, he did. I got several letters and I have them yet, and he also wrote the animals had come back. He acknowledged Dustan had come in with the provisions.

Q. The complainant calls for the production of the letters from Johnston to the witness.

It is agreed that the witness on returning to his home, in Glenwood Springs, will make search for the letters of which he speaks, and that all letters which he finds of Mr. J. C. Johnston bearing upon the subject of the sending of the pack train and provisions

from Buena Vista to Aspen shall be sent down by mail, addressed to James Knoblock, at Aspen, Colorado, which letters shall be introduced in evidence when received and shall be attached to this deposition.

Q. Now, you say, Doctor, that about this time you were getting tired of putting up money and would not put any more?

A. On my own account until the other fellows would do something, too.

Q. About that time an interest was sold?

A. Yes, sir; to Mr. Brown.

176 Q. When?

A. Soon after I got back with the pack train to Buena Vista. It was in June.

Q. Who negotiated the sale to Brown?

A. Mr. Acheson and Seaver. Seaver was spoken to and was present at the time the sale was made.

Q. What amount was paid for the interest by Brown?

A. I couldn't tell; several hundred dollars, though.

Q. And that sale was made to raise money to prosecute this work?

A. Yes, sir; and to pay the men.

Q. To whom was the money paid by Mr. Brown?

A. It was paid to us. All three were present, and the money was given to Acheson and myself to come over here, and at the same, not having enough, we made a note at the bank at Buena Vista, as near as I can recollect, for $300 and took that money with us, too.

Q. How much did you have altogether?

A. I forget what Brown did pay. I recollect the note Acheson made, and I endorsed it and we took that money with us.

Q. And it took the amount which Brown paid with $300 you raised in Buena Vista to pay the indebtedness at that time?

A. We wanted to buy provisions and we owed Dustan, and also wanted to use some more money over here, and during the time we were out we delayed in sending the provisions back, and a letter was sent by Johnston to me asking why the provisions were not sent; that he had to run a bill here for provisions; and we paid Dustan and some money was sent in to Johnston and the other men. As near as I can recollect, the reason the note was made was this: Acheson made the note and I endorsed it, and I wanted

177 him to pay the note because he hadn't been putting up his share, and I finally had to pay the note and didn't get the money back for three years.

Q. As a matter of fact, how much delay was there in sending the provisions?

A. I think we were there ten days.

Q. You left early in June?

A. Yes, sir; and it took a week to get there.

Q. Was there more than one man in charge of the provisions and the pack train in coming back?

A. Yes, sir; Dustan got another man to help him over with the train.

Q. Did you help load the provisions?

A. I didn't help load them, but saw the provisions taken out and put on the animals.

Q. How many animals started back?

A. I don't recollect how many we had.

Q. Now, then, who came back with the money that was raised on the sale to Brown and on the note?

A. Dustan; he was in charge of the train.

Q. What was Dustan to do with it?

A. To give it to Johnston.

Q. Do you know whether he did or not?

A. From Johnston's letters I think he did.

Q. Did Dustan have instruction to take receipts for the payment of that money?

A. I don't recollect. I knew I would hear from Johnston whether he got the provisions and the money.

Q. Now, did you ever hear from Dustan about that?

A. I think I saw Dustan about a year after that in Leadville; no; I saw him in August, about a month or two afterwards, and I recollect he told me everything was right and said he did'nt see why Johnston should have acted so with us.

Q. How much money did you gave Dustan to give Johnston?

178 A. Well, I couldn't tell how much nor how much we paid for the provisions.

Q. Isn't it a fact that Acheson came back to Aspen?

A. He came in with me in August.

Q. Did he come in in July?

A. I don't think he did.

Q. Isn't it a fact that Acheson received this money which came from Brown and brought it over here for the purpose of paying the bills?

A. No, sir; because I came with him when he came, and I don't think he came between June and August.

Q. When Acheson came with you was that his first trip?

A. Yes, sir; as near as I recollect, I think it was. If he was here he was here unknown to me. I never heard of it.

Q. You say that during that time, while you were gone, you were getting letters from Johnston weekly?

A. I didn't say weekly. I got them once in awhile.

Q. You say you heard in July something was wrong?

A. Yes, sir.

Q. Just what did you hear?

A. I simply heard that there was some connivance about the property and I better come over; it was more of a rumor. Parties would come to Buena Vista and say, Johnston isn't running the thing right. You better go and see him.

Q. Do you remember who told you?

A. No, sir; I couldn't say. They were mostly strangers to me that I had met here, and I didn't know their names.

Q. Did you know the parties who relocated the property with Johnston? Do you know their names?

A. All I know is Mr. Johnston did it. I hear Mr. Crittenden and a man here assisted him. I wasn't here at the time; it was simply hearsay.

Q. You did learn Crittenden and Adair were two of the locators?

179 A. I don't know about that. All I know about it is Johnston located the property and I didn't know who was interested, except I heard Crittenden assisted him, because there was some arrangement between Crittenden and Johnston about the mine.

Q. Do you know whether the mine owed Crittenden and Adair anything for supplies?

A. I don't think there was anything owing to Adair. There might have been something owing Crittenden for purchases made by Johnston. I didn't owe him anything personally. Crittenden couldn't have had much owing him, for his whole store didn't amount to much; it wasn't more than a hatful; he only had a little tent. Two men couldn't get into it at the same time.

Q. Did you know how Johnston was running the mine and getting grub during the delay?

A. We were not out of provisions; we had some when we left; we had provisions in the cabin up here, but there were two reasons why I went out. One was to get provisions and the other was on account of Seaver's sickness and having pneumonia. We had provisions. I had brought some here and put in the cabin.

Q. I will ask you whether from the time you and Seaver went out early in June or the latter part of May, up to the time in August when the Smuggler 2 was located in the name of J. C. Johnston, you or your partners furnished anything to Johnston or the mine except what you sent over in provisions and money by this man Dunstan in July.

A. I used to write to Johnston from Buena Vista and tell him that——

Q. Answer the question first and make your explanation afterwards.

A. It was this way: The men used to come to me at Buena Vista with orders from Johnston and I would pay them, and a

180 man came from here with a bill for provisions and I paid him, too, and made him receipt the bill.

Q. Isn't it a fact that you and your partners paid nothing and furnished nothing during this period of two months except to send these provisions and this money in July by this man Dustan?

A. It was only about thirty days, because the provisions didn't get in until the latter part of June and we came in the first of August. We went out the first of June and the pack train came in the latter part of June and we returned the first of August, and during that time he got provisions here at the store and I paid the bill, but there was provisions here during all the time—in other words, Mr. Johnston, when we left here, had provisions. It is true, we delayed

sending them longer than we intended, but there was no delay of more than five weeks from the time the provisions came in and Johnston left the town and Acheson and myself came in.

Q. If you can produce the letters you can find out how much Johnston got during that time. What was the amount of the other bill that you afterwards paid on account of supplies that Johnston had bought while you were gone?

A. I don't think it was very large, because it was not necessary. I think I paid the man something like eighty or ninety dollars.

Q. You can't remember his name?

A. No, sir; I cannot.

Q. Did you understand that that bill included everything in the way of supplies for the mine except the provisions you sent in in July?

A. No, sir.

Q. What else was there?

181 A. Mr. Johnston sent men out with orders to me at Buena Vista, "Due this man so much money." They would come and round me up and I didn't have a dollar. A fellow would leave the camp and he would send the orders out to Buena Vista to me.

Q. I would like to have you state how much you paid in orders from June, or about that time, up to the time you returned in August.

A. I think, on orders, from the time I went out up to the time I returned in August, I must have paid out as much as two or three hundred dollars.

Q. State who you paid during that time.

A. I don't know the names of the workmen now.

Q. Did you save these orders?

A. I did have these orders. I don't know whether I have them now or not. I don't know whether they were burned or not.

Complainant calls for the production of these orders.

A. You must recollect I was burned out and lost everything I had in Buena Vista.

Q. Did you take any receipts when you paid this money on these orders?

A. I took the order when I paid the money. I didn't take any receipt.

Q. Now, at the time you were here, Doctor, you had something to do with the working of this mine, did you—the time you were here in May?

A. I didn't do any personal work. I used to go up there, but I never worked at it myself.

Q. Where was it you did the cooking?

A. At the Johnston cabin.

Q. And you cooked for the men employed on the mine?

A. Yes, sir; they would go off in the morning and come back in the evening. I did that at first and then they took that tent and put it over there, and some of the men slept there and

didn't come over all the time, but cooked over there some of the time.

182 Q. How long did you act in that capacity?

A. Well, I was doing that pretty much all the time I was here.

Q. How long was that?

A. I was here between five and six weeks.

Q. During that time didn't you get pretty well acquainted with the men?

A. We worked this way: some men would work a few weeks and then would want their money; some worked a week or two weeks and would then get their money and go off and Mr. Johnston would get other men, and it was pretty hard to get men and they wanted high wages for what work they did. The man who located the Camp Bird worked for us awhile and then wanted his money; others would work two or three weeks and then want the money to get provisions and locate for themselves and work their property.

Q. Did you recognize any of the men who came to you with orders as having worked on the mine—men who brought you orders from Johnston to Buena Vista?

A. No; only one I knew; the others were strangers to me.

Q. They were all strangers to you?

A. I knew only one man well who stopped with us all the time and that was Dustan.

Q. Do you remember the name of the man you did know?

A. Josh. Dustan.

Q. Is that the only one?

A. The only one I recollect.

Q. Did you know a man by the name of White?

A. I think I recollect a man by that name.

Q. Did you ever pay him any wages?

A. I don't recollect about that. I only have an indistinct recollection about his name, and I think I did know a man by the name of White.

Q. Do you know a man by the name of Kelly who worked on the mine?

183 A. I don't recollect him.

Q. Do you know a man by the name of Louis Miller who worked on the mine?

A. I don't recollect him, sir.

Q. Do you undertake to say, Doctor, that up to the time of the location of the J. C. Johnston mine in August all these bills against the mine were paid except the one you afterwards paid, which you have referred to here?

A. I think the bills were all paid. I think there was a little balance due the men. The bills were finally all paid; whether they were all paid at that time I don't know. There might have been some little balance owing some of the men and possibly some to Mr. Johnston.

Q. Will you give us an estimate of what that balance was?

A. No; I couldn't tell you.

Q. Do you know the amount of money Acheson paid to Crittenden and Adair when he took their deed to the J. C. Johnston?

A. No; I was not present then.

Q. Didn't Acheson report to you directly afterwards?

A. I don't remember. He might have done so. I don't recollect that. I wasn't present, though he told me something about it afterwards, but I don't recollect the amount of money.

Q. What was that money paid for?

A. That I don't recollect; it was a transaction Mr. Acheson made himself. It was done up at Leadville, and I was not there at the time.

Q. Do you know why he should have paid any money at all if there was no validity in the title to the Johnston?

A. In fact I don't know he paid them any money.

Q. You saw him afterwards?

A. I only stayed one day when he came back. I then went out to Buena Vista.

Q. Did you talk the thing over?

184 A. He said he got matters in shape.

Q. Do you know where he got the money to settle up?

A. No; except he might have used part of the money he got from Brown.

Q. The money he got from Brown was early in July?

A. We got that money, Acheson, Seaver, and myself, and he might have kept a part, if he paid anything. He said he fixed matters all right.

Q. That money you got from Mr. Brown was put into provisions and was sent over here?

A. Yes, sir. I don't know where he got the money. In fact, I don't know he paid any money.

Q. Didn't you state that a part of the money Acheson paid to Crittenden and Adair you furnished?

A. No, sir; I never said anything of the kind about that. I didn't know anything about that; there was no question asked me about that.

Q. Now you say you did pay a bill of several hundred dollars at one of these stores in the fall of 1880, and that that was a bill for supplies, after the first of August or before, which?

A. I think that was for a part of July and a part of August, and on account of Johnston; and I think the man who had charge of the property when Johnston went out kept trading at the same store, and there were two bills, if I recollect right, for stuff furnished the man Johnston put in charge when he went away.

Q. Now, if you sent in all these provisions in July or the latter part of June, how did you account for the fact that there were any bills incurred for supplies during July?

A. Because they run short of some stuff and would go and get it.

Q. There was one bill of two or three hundred dollars

185 which you settled in the fall of 1880—what time in the fall?

A. I think I paid that fellow along in September or October.

Q. Do you know to what extent the property was worked during August?

A. I think when I came over there there were two or three men working the thing.

Q. Now, then, after Acheson settled with Crittenden and Adair did you take possession of the mine in August?

A. Yes, sir; we took possession and left this same man in charge, this man Miller, and then he came over late in the fall, and I paid personally all the men off. I paid this man, and I think his name was Miller. It was the same man Johnston had left in charge. I paid off the provision bill, and sent the money to pay the men off through Billy Koch. I gave Koch about $650.

Q. That was when?

A. In the fall of 1880.

Q. Late in the fall or early?

A. I believe it was late in the fall. I think it was September or October.

Q. If September it was early in the fall?

A. Well, yes.

Q. Then this man Miller and these men were contracting bills on your credit during this time?

A. Yes, sir.

Q. Did you leave word here to let them have supplies?

A. Mr. Acheson did; he stayed here.

Q. Did Acheson at that time have any credit in this town?

A. I don't know. Only they knew he worked a good deal here, and I guess they were glad to sell goods and take us for it.

Q. Do you know anything about the sale of an eighth interest in the Smuggler 2 in the month of September or October by Seaver to Mr. Holden?

A. I don't know anything about it.

Q. You had nothing to do with the sale?

A. No, sir.

Q. Got no part of the proceeds?

A. No, sir.

186 Q. Gave up no part of your interest as a part of that eighth?

A. I didn't know anything about that sale.

Q. Did you know what was done with the proceeds of that sale?

A. I didn't know that he sold it.

Q. Do you know whether or not Seaver or Acheson paid any bills here the first of August?

A. I know this from what Mr. Acheson told me. He had the money I left with him, and he said he paid off certain bills here.

Q. When was that?

A. In August, 1880.

Q. How much money did you give him then?

A. I think, as near as I can recollect, I gave Mr. Acheson about $150 to $175 up in the cabin.

Q. And yet along in September there was six or eight hundred dollars to pay and you paid it?

A. I paid this in October, I think, for this man Miller or this man Adair. I will not state positively when I paid this bill, but I paid it some time in 1880. This bill came over and this groceryman came over and had the bill with him and I paid him and sent the money over here by Billy Koch to pay the men.

Q. You were paying the bills in full on your own account, were you?

A. Yes, sir; I paid them with my own money. I don't recollect whether Acheson and Seaver assisted me in the $600 or not, but I recollect the money I paid the men and the money I paid the groceryman I paid out of my own pocket, but I forget about the $650 I gave to Billy Koch.

Q. Did you ever have a general accounting with your partners, Acheson and Seaver, to see where you stood and settle up?

A. Only in this: I never made a settlement in full. When Mr. Acheson came to Buena Vista he said I paid out so much money down at Maysville and you owe me so much.

187 Q. When was that?

A. That was during the summer of 1880, after I came back from Aspen or Ute town, and I said, Well, I have paid out so much and we will try and fix the matter up.

Q. Do you know anything about Messrs. Crittenden and Adair having settled or claimed to settle all bills at the time they got their interests in the J. C. Johnston?

A. I don't know anything about that. I know there were no bills paid by anybody except what I paid. They were going to take the property for the bills.

Q. When?

A. In the fall of 1880, because the bills were not paid.

Q. Can you testify, Doctor, that Crittenden and Adair didn't pay any bills of that mine?

A. I don't know of Mr. Crittenden paying any.

Q. Do you know he didn't pay any?

A. Why, I don't know he paid anything. I don't know why he should pay anything.

Q. Do you know how Crittenden got his interest in the J. C. Johnston?

A. Only from hearsay.

Q. Who told you about it, Doctor?

A. I heard it through parties when I came back here to Aspen in August, and I also heard it from parties just a few days before that trip in August.

Q. Did Mr. Acheson tell you anything about it?

A. He did when he came back from Leadville.

Q. He simply told you he had settled up with Crittenden?

A. He simply said he had fixed that matter all right and had got our interests back that Mr. Johnston had tried to convey to Crittenden.

Q. Did he tell you what terms he agreed on with Johnston?

A. He said he made Johnston give up what didn't belong to

him. Acheson was a man who didn't talk a great deal and
188 you just had to get things out of him.

Q. There was no sort of accounting or settlement with Acheson?

A. I don't recollect he said anything about that.

Q. Did you ever have any kind of accounting with him for the money he paid at that time?

A. I only had one settlement with Acheson, and that was some time before we all came over here in 1880; I never had any other settlement with him.

Q. There was nothing said between you and Acheson at that time about any labor bills or bills for supplies?

A. We came over here and brought the money to pay out; we came for two reasons; one was to see the property, and we know there was some money due to the men and for provisions, and we brought money for that purpose, and I gave the money to Acheson and I left.

Q. You gave him how much?

A. About $175.

Q. At that time did he put in $175.00?

A. He had some money and I gave him what I had, except enough to take me out.

Q. Did you know how much he had at that time?

A. I think he must have had as much as that.

Q. Did you look about town to see what bills were due for groceries or supplies or labor?

A. I spoke to Dustan and asked him about the matter and saw one or two of the men we were owing and also one of the men at the store; I didn't settle any of the bills because Acheson said, "Here, I am going to Leadville; Johnston has gone, and we will fix the matter when I come back." Acheson came back one evening, and I made up my mind to go out the next morning.

Q. It was understood after Acheson came back that he had some bills to pay here?

A. Yes, sir.

Q. And you understood that he was to pay them with the
189 same money you gave him to take to Leadville?

A. He didn't take it to Leadville; I gave it to him after he came back.

Q. When he went to Leadville did he take any money with him?

A. He had some; I don't know how much.

Q. While he was gone to Leadville did he spend that money?

A. I don't know; I don't know how much he had when he came back nor exactly how much he had when he left Buena Vista.

Q. But he had some?

A. Yes, sir.

Q. And you gave him $175.

A. As near as I can recollect.

Q. And he was to pay the bills?

A. He was to pay the bills and the men.

Q. Did you ascertain between you that the money which he had and which you gave him was sufficient to pay the bills?

A. I didn't ascertain that.

Q. How much money did you take away with you?

A. Hardly any.

Q. How much did you bring with you?

A. One hundred and eighty or a hundred and ninety dollars.

Q. Did you and Acheson about that time get into a poker game in this town?

A. I played some in this town one evening.

Q. Do you remember whether you won or lost?

A. I think it was a stand off.

Q. Do you remember about Acheson whether he won or lost?

A. I don't remember; I know he played longer than I did.

Q. He was with you?

A. Yes, sir.

Q. That was after he came back from Leadville?

A. Yes, sir.

Q. Do you remember anything about his selling any property at Leadville about that time or before that time?

A. I don't recollect; he and Seaver had some business, but I had no interest in it, and he said he and Seaver got some
190 little money out of it.

Q. Did he tell you when he returned that he paid this money to Crottenden and Adair and the parties he settled with for the J. C. Johnston interest, and that he raised the money by selling property that he and Seaver had?

A. I don't remember, except he said he fixed the matter and made Johnston give up what didn't belong to him; that he got the interest back by deed because he relocated it.

Q. That is a deed from Crittenden and Adair and from Johnston?

A. I don't remember the parties; he said it was deeded back and the thing was all straight.

Q. Who was it informed you who assisted about the location of the Johnston claim?

A. I heard it some way through some Kansas City parties who were interested; I don't recollect how it came to me.

Q. And thereupon you went to Mr. Thomson, did you?

A. Yes, sir. I understood he was interested and was going to try to get hold of the claim.

Q. Now, how did it happen, if the J. C. Johnston was improperly located, and that it was afterwards gotten rid of, that you did take stock in the Fulton Mining Company, and that you did recognize the J. C. Johnston title?

A. We made up our minds we might just as well have that ground patented under the name of the J. C. Johnston as any other name; the attorneys in the case said it didn't make any difference; we knew the side and end lines were substantially the same as the Smuggler 2, and we thought we could just as well have it surveyed

and patented in that name, and we sent a surveyor over here on snow shoes, and we did have it patented under that name.

191 Q. You didn't care, so long as you got your interest?

A. No, sir; it didn't make any difference about the name of the claim. We called the other the Chatfield.

Q. Did you know anything about the deed which Crittenden and Adair made to the Fulton Mining Company for their interest in the J. C. Johnston?

A. No, sir.

Q. Never heard of that?

A. No, sir.

Q. Didn't look up the title of the J. C. Johnston at the time you took your stock?

A. I was told by the attorneys the thing was all right and didn't look it up personally.

Q. At the time you took your stock, what was the amount of your interest in the mine?

A. My interest was one-quarter, but I got a little more stock for the reasons I stated.

Q. Did you have exactly one-quarter at that time?

A. I didn't have one-quarter; it was in my wife's name.

Q. Hadn't your wife, together with Mr. Seaver, made a deed to Mr. Brown for a part of the interest prior to that time?

A. I guess there might have been a little less than a quarter, for we did make a deed; I forget the amount Mr. Brown got, but it was small, so we figured it one-quarter; he didn't get much.

Q. Who got the rest of the stock at the time the Fulton Mining Company was organized?

A. Mr. Wilson, Mr. Chatfield, Mr. Acheson, and, I think, Mr. Dean had an interest, and Mr. Thomson and Mr. Sayer; the interest of Thomson and Sayer came, I think, from Wilson and Chatfield; they gave it to them.

Q. They gave it to them?

A. It was none of my deal; it was a deal between them.

Q. Isn't it a fact that the first issue of stock was like this: The first issue was fifty thousand shares, and that out of that first fifty thousand shares issued the parties who got the stock were

192 Chatfield, Wilson, Thomson, and Sayer and yourself, and nobody else.

A. I don't recollect whether Mr. Dean and Mr. Acheson—whether Dean got any stock at that time or not. I can't recollect, but the books will show just what stock was issued.

Q. And you say that you and Seaver and Acheson and your grantees got sufficient stock to cover your entire interests as claimed in the Smuggler 2?

A. I say the Fulton Mining Company composed both the J. C. Johnston and the Chatfield. We got our stock and were to receive a certain amount of the treasury stock if it was not sold for development, and then it was to be divided up among us if these other men who were claiming interests were settled with; then the balance was to be divided among us *pro rata* as our interests should appear.

Q. Who do you refer to?

A. We had an adverse with Holden and others and had to settle with them, and the treasury stock was taken to settle with them.

Q. Holden's interest was what he got from Acheson was it?

A. I so understood.

Q. And what he got from Seaver?

A. I didn't know anything about that all.

Q. You say Holden and his parties were claiming more than they were entitled to?

A. That was what we thought.

Q. All thought so?

A. Our attorneys and Mr. Wilson and Chatfield, and I and Seaver and Acheson thought so, too.

Q. Was Holden claiming any more proportionally than you and Seaver claimed?

A. I don't recollect all the ins and outs of that, but I know we thought Holden and his friends were claiming more interest in the property than they were entitled to.

193 Q. Do you know how much Holden and his parties did claim at first.

A. I don't recollect exactly how much, but I know we all thought they were claiming too much, and we stood them off one or two years before we settled.

Q. Do you know how much they got?

A. I think 40,000 shares or 42,000 shares.

Q. Did they get more or less than what they claimed?

A. I think they got about what they claimed in the first instance.

Q. Who did that come out of?

A. Out of the treasury stock.

Q. There was enough?

A. It didn't take it all.

Q. There was a balance left?

A. Yes, sir.

Q. That you divided between the other parties?

A. Part was taken in that way, and expenses were paid by taking up the treasury stock.

Q. Are you sure about that?

A. I know I got some for that reason myself. I was sent to look after matters, and they didn't have any money in the treasury, and I took the stock at the price the company valued it at.

Q. Isn't it a fact that right after you settled with Holden you increased the stock?

A. We did after that; but, of course, Mr. Wilson, the books of the company will show all this exactly as it is.

Q. You negotiated the settlement with Seaver, didn't you, by which you were to get more stock than he did?

A. Yes, sir; I talked with him about it in the company's office.

Q. The stock he got was his full share, I understand, less what you took on account of his indebtedness to you?

A. No, sir; not his full share. For this reason: if there was any

treasury stock left he was to receive his share as his interest
194 might appear in the first instance. We had not settled with these parties yet, and if we could get the property in such shape that there was any treasury stock each was to get his share.

Q. So that the fifty thousand shares were set aside as a sort of contingent fund to meet these outside claims?

A. Yes, sir.

Q. And after you settled the claims with the stock you would divide up the balance between you, and Seaver would get his share at the same time?

A. Yes, sir.

Q. Seaver agreed to that, did he, and the stock was issued accordingly?

A. Yes, sir.

Q. You got in the first instance something over fourteen thousand shares?

A. Something over; yes, sir.

Q. Did you ever take that stock from the books? Was it issued to you?

A. It was issued to me; yes, sir.

Q. That is a copy of the certificate? (Paper handed the witness.)

A. As near as I can recollect, it is a copy of it.

Q. Does it appear or not whether that was ever detached from the books of the company?

A. There was some mistake made about the stock, I think, at first when it was issued, and this was cancelled, so that that stock was really never issued.

Q. So that this stock was never really issued?

A. I don't know that that certificate was, but I know I got about that amount of stock.

Q. How about that stock? (Another certificate handed the witness.)

A. This stock here was issued to me, you see, but there was a mistake made. The stock really ought to have been issued to my wife.

Q. How about the number of shares; wasn't there any
195 certificate for the balance?

A. The way it was fixed the most of the stock was in my wife's name, and I had a small portion in my own name, and this certificate was cancelled.

Q. So that the two certificates which were issued are the correct issue and represent correctly the shares you received?

A. Yes, sir; that thing was cancelled because it was all issued to me, and I was not entitled to it. My wife let me have a small amount of it, so as to hold a certain amount in my own name.

Q. These two certificates aggregate 14,583½ shares, but the books show that afterwards you received a certain amount or number of these shares?

A. Yes, sir. The books also show I lost a certificate, and they gave me another in place of it. It was burned up when I was burned out.

Q. Can you tell any more definitely what was the basis of the settlement as between you and Seaver?

A. No, sir; only I said I thought I ought to have more stock than he, because I had put up more money than he did, and I thought that was a good time to get it.

Q. Did you and Seaver get as much stock, proportionately, for your interests as Mr. Holden and his parties got?

A. I think according to the interest Mr. Holden had he got the same proportion of the stock as we did.

Q. Did you ever see the location certificate of the J. C. Johnston mine?

A. I don't know whether I did or not. I can't recollect that.

Q. Do you remember whether the certificate was shown to you or any other papers of the J. C. Johnston at the time you were pursuaded to cast your fortune with the Johnston people in-

196 stead of the Smuggler 2?

A. I don't recollect that, sir. We didn't think so far as that went. We never considered the location of the J. C. Johnston was of much account, but when we had it patented we just thought we would keep that name. Before that we always considered the Smuggler 2 would hold the ground.

Q. Now, at the time you took your stock it appears by the books of the Fulton Mining Company that neither Seaver or Acheson got any at all. Did they have the same right at that time to stock that you had?

A. They got theirs about that time, as near as I can recollect.

Q. Isn't it a fact that Acheson never got any?

A. I mean that interest. We thought Holden and his parties were claiming more interest than they were entitled to, and Mr. Seaver got his shares and was trying to settle that matter. It was through Acheson Holden got his.

Q. And because Acheson and his parties were claiming more than you thought they were entitled to you didn't give them any?

A. Yes, sir.

Q. You were present?

A. Yes, sir.

Q. And was one of the incorporators of the company?

A. Yes, sir.

Q. You were present and presided when the first stock was issued?

A. I was; yes, sir; and signed the certificates.

Q. When was Acheson and his parties first heard from after the organization of the company or the first issuing of stock of the Fulton Mining Company?

A. I think very soon after.

Q. Did you fully understand at that time what the controversy was between the Johnston and the Smuggler 2 claim?

A. I understood Mr. Johnston jumped the whole property and sold some out and wanted to capture the rest. I guess I understood it.

197 Q. Did you understand that Mr. Johnston was claiming in the J. C. Johnston a one-half or a one-quarter interest?

A. I understood he was claiming the whole business when he relocated it. I understood he not only claimed part, but sold part to Crittenden, and that he afterwards sold to Chatfield.

Q. That he sold how much to Crittenden?

A. I don't know, but he sold it all out and claimed the whole business by claiming it or selling us out.

Q. Did you — out altogether?

A. Yes, sir.

Q. Did you learn that from the record?

A. I learned it from Acheson when he came back from Leadville and he said he had seen Crittenden and Johnston.

Q. You never learned there was an attempt on the part of the Fulton Mining Company to get away from you and your partners in the Smuggler 2 the interest in the property which Acheson had bought and settled for from Crittenden and Adair at Leadville? To make this question plainer I will state that the records show that the J. C. Johnston claim was located by J. C. Johnston and Geo. A. Crittenden and Jos. W. Adair, and that the location certificate shows that Mr. Johnston claim- one-half interest and Crittenden and Adair claimed the other half, and the record also shows that Mr. Acheson early in August, 1880, took a deed from Crittenden and Adair, which shows on its face the consideration paid by Acheson to Crittenden and Adair for all their right, title, and interest in the J. C. Johnston, and the record also shows that the company in December, 1880, took a second deed from Crittenden and Adair for all their interest in the J. C. Johnston, and that
198 the first deed at that time had not been recorded. Do you know or did you ever hear anything about that transaction?

A. All I know is simply this: that Mr. Acheson said he had fixed the matter all right and it didn't make any difference what they called it.

Q. Did the Fulton Mining Company at the time it was incorporated claim to own the entire legal title of the Johnston mine?

A. As near as I can recollect, they claimed it under the assumed name of the Johnston; it was the property of the Smuggler 2; the side lines and end lines were the same and the Fulton Mining Company claimed the property and were going to settle with the other men who were claiming interests, according to the way they bought their interests should be settled, and not give them more than they thought they were entitled to.

Q. You didn't examine the record to see how the legal title was?

A. No, sir; we had an attorney to do that.

Q. You left that to your attorney?

A. Yes, sir.

Q. Do you know what interest Mr. Holden had in the claim?

A. No, sir; I only know he got the interest from Acheson. I don't know the amount; the books will show that.

Q. Do you know whether a person by the name of Maine A. Underwood had an interest in the property?

A. I think he got an interest from Acheson or Seaver.

Q. Do you know anything about the suits in the State court between the claimants of the Kansas City and the Johnston?

A. I know we had suits pending, but they never came to a head, because we settled.

Q. Were they settled on the same basis as the others?

A. Those were the suits I had reference to—the suits of Holden and his friends.

199 Q. These suits covered the controversy between the Kansas City and the Chatfield as well as the Smuggler 2 and the Johnston, did they not?

A. These claims were identically the same.

Q. There were two sets of suits, were there?

A. If there were it was simply done in order to cover one or the other, so that they couldn't get out at a loop-hole and say it wasn't brought right. I know there was something said about that.

Q. Do you know how it happened in these suits the parties plaintiff and defendant were all different or pretty near all different?

A. No, sir; I don't.

Q. Different parties plaintiff and different parties defendant in the two suits?

A. No, sir; I don't know why they should have been.

Q. You stated the reason your company gave Messrs. Holden, Brown, and the others more than you thought they were entitled to was because you didn't want any more lawsuits and for some other reason; you said that was one reason, what was the other reason?

A. The only reason that I recollect, our attorneys advised us after the thing had gone on a year or two to settle with them, and we did it through the advise of attorneys.

Q. Were they getting more or less in proportion to what you and Seaver got?

A. I couldn't tell you; I never figured it out.

Q. What became of the pack train, Doctor, if you know?

A. I think that some of them were left here and some of them came over to Buena Vista or were taken over there.

Q. When was that?

A. That was, I think, in the late fall of 1880.

Q. Wasn't it your wife instead of yourself that sent the $25 to Mrs. Johnston from Buena Vista?

200 A. Well, I think possibly it might have been; it was sent by my orders; she might have sent it over possibly. I don't recollect as to that; it was done by my orders, however.

Q. I will ask you if you are not mistaken about the time Seaver got scared at the lion and turned back; wasn't that prior to the time you came to Aspen at all.

A. I might have got that lion story mixed, but my recollection is it was that time; Seaver came back, and it is my recollection it was that time he got scared at the lion and came back; I know he didn't go; I went over after Johnston did and Seaver didn't follow until some time after I got there.

The further examination of witnesses in this behalf was continued until Saturday, the 14th day of July, A. D. 1888.

SATURDAY, *July* 1*sth*, *A. D.* 1888.

Charles I. Thomson present as solicitor for the Standard Mining Company of Kansas City, and C. S. Wilson solicitor for complainant.

C. E. KOCH, a witness of lawful age, being first duly sworn according to law, testified as follows:

Testimony of William C. E. Koch, Sworn.

Examination conducted by C. I. THOMSON, Esq.:

Q. What is your name, age, residence, and occupation?
A. William C. E. Koch; age, thirty years; occupation, ranching down on Hunter creek, Pitkin county, Colorado.
201 Q. Where did you reside in the summer and fall of 1880?
A. In Aspen, Colorado.
Q. What was your occupation in Aspen at that time?
A. Running a grocery store, and I was postmaster at that time.
Q. Were you acquainted with the Smuggler 2 mining claim, in Roaring Fork mining district?
A. Yes, sir.
Q. You may state whether during the summer or fall you paid off any claims againt the Smuggler 2 claim.
A. I did.
Q. Where did you receive the money to pay off the claims?
A. My impression is in Leadville or Buena Vista.
Q. From whom did you receive it?
A. From Dr. Dunscomb.
Q. How much as nearly as you can recollect?
A. Between $600 and $650; not less than $600, nor more than $800.
Q. About what time did you receive it from him?
A. I think it was in the fall of 1880, possibly September or October.
Q. What did you do with the money after you received it?

(Objection as this testimony is relative to no issue in this case, because it now appears that the money was paid in the fall of 1880, after the settlement between Acheson, Crittenden, and Adair.)

A. Took it to Aspen and paid, as per instructions, James Miller and six men then working on this property; he was to give them their time; I paid Jim Miller his time, and each of the men individually for his time.
Q. For whom, if you know, had these men been working?
A. Well, I recognized nobody except Dr. Dunscomb in the transaction.
Q. What do you know of Crittenden having paid the men?
A. I understood——

(Objected to as hearsay.)

202 Cross-examination.

Conducted by C. S. WILSON, Esq.:

X Q. How long had you been running this grocery store?

A. July and August.

X Q. Of that year, 1880?

A. Yes, sir.

X Q. How many other supply stores were there in town at that time?

A. McPherson and Jacobs.

X Q. Anybody else?

A. I don't recollect.

X Q. Did Crittenden have a place?

A. I don't know of any place. He had a law office.

X Q. Were McPherson and Jacobs partners, or did they have separate stores?

A. They were partners.

X Q. Did Mr. Wheeler have a store at that time?

A. He had one at one time, but whether at that time it was in operation I do not know. He closed out about that time.

X Q. How about Cowenhoven?

A. I am about sure that Mr. Cowenhoven had not opened his store at that time; I think he opened it in November.

X Q. Where was it that Dr. Dunscomb gave you this money?

A. That is a question. I have some doubt about whether it was in Buena Vista or Leadville. Dr. Dunscomb met me at one place and told me he wanted me to take the money over. Within forty-eight hours he gave me the money to bring over to Aspen.

X Q. I wish you would remember the exact date—the month and the day of the month, as nearly as possible—when he gave you the money.

A. That is almost impossible unless I had the books of Koch and Jones. They are now in the possession of Charlie Durant, if
203 he has not destroyed them.

X Q. Now, giving the amount of this money—$600 or $650—are you testifying from your personal recollection or from what the Doctor has reminded you?

A. I have not spoken to the Doctor for two years.

X Q. Was this money paid you in currency or in checks?

A. My impression is in money.

X Q. About how many men did you pay off with that money?

A. Between four and six.

X Q. And for how long a period of time did you pay them, if you remember?

A. After I received the money?

X Q. No. What amount; for what time?

A. Per day?

X Q. No. How long a period of time had they been working?

A. Well, I am not sure, but my impression was that they had been working for some time, but there was a good deal of lying off at that time. I mean none of them put in thirty days in the

month—that is, thirty shifts in the month. They had been working only one-half or two-thirds time, but the wages covered about two months' time—that is, two months' pay.

X Q. And all of this money went to the payment of wages?

A. To the payment of wages.

X Q. Did any of it go to pay the July wages of 1880?

A. I could not say.

X Q. Do you remember the names of any of the other men that you paid money to except Miller?

A. I do not. Mr. Miller being a character that was afterwards well known, I remember him, whereas the other men have passed out of my memory.

204 X Q. Why do you remember so distinctly about the amount of money you brought over?

A. Merely because it was the first money I had been intrusted with by outside parties where I was a comparative stranger. Gillespie afterwards trusted me with drafts of $500 to $1,000 and the Merchants' and Mechanics' bank with from $2,000 to $3,000 and gave me instructions as to signatures and drafts.

X Q. Were you informed by Mr. Thomson or Mr. Brown concerning the testimony of Dr. Dunscomb as to this amount paid to him to be paid to the men?

A. You mean Mr. Ed. Brown, do you?

X Q. Yes, sir.

A. Mr. Thomson spoke to me of the amount after I had answered the question; he asked me the amounts, and I told him $600 — $800.

X Q. So that, concerning the amount of this money, your memory has not been refreshed at all either by Mr. Brown or Mr. Thomson?

A. I do not know. Mr. Brown sent me a note this morning; whether or not he stated any amount in it I do not recollect. He merely asked me to come down here; he wanted to see me. I cannot say that it stated the amount. He asked me to look over my papers, and I looked over one book and found that what he wanted was in Koch & Jones' books.

X Q. When did you come to Aspen?

A. In October, 1879.

X Q. Were you acquainted with Mr. Acheson or Mr. Seaver?

A. No, sir.

X Q. With J. C. Acheson?

A. No; I do not recollect the man at all.

X Q. You do not know Mr. Acheson at all?

A. I do not think I do; I have heard the name; that is all.

X Q. Do you know J. C. Johnston?

A. I know him by hearsay. He got a bullet through his toe or something; his name was brought up in that way.

205 X Q. Do you know anything of the circumstances of the location of the J. C. Johnston?

A. Nothing at all.

X Q. Do you know where James Miller is now?

A. I think I saw him in Aspen three weeks ago. I do not know what has become of him.

Redirect examination.

Conducted by C. I. THOMSON, Esq.:

Q. On what claim was this money given to you to be paid?
A. Smuggler 2.

That is all.

WM. C. E. KOCH.

The further examination of witnesses in this behalf was continued until Monday, the 16th day of July, 1888.

MONDAY, *July 16th, A. D.* 1888.

Present: Charles I. Thomson, as solicitor of the Standard Mining Company of Kansas City, and C. S. Wilson, as solicitor of complainant.

The witness, EDWARD DUNSCOMB, whose direct and cross-examination were completed on Friday, July 13th, present, and, being re-examined by Charles I. Thomson, solicitor for the Standard Mining Company of Kansas City, testified as follows:

Redirect examination by C. I. THOMSON:

Q. Dr., you may state what, if any, search you made for the letters and orders you spoke of in your testimony on Saturday and what the result of your search was.

A. I went to Glenwood and searched among my papers,
206 through a great many letters and papers I have, but I couldn't find any of the papers I referred to or any of the letters. My impression is they must be with the company's papers, as I am certain about three years ago, which was subsequent to the fire, that I saw some of the letters, but I think I gave them to the secretary of the Fulton Mining Company.

Q. Dr., what, if any, interest have you in the Standard Mining Company, or in the Johnston or Chatfield mines at the present time?
A. I haven't any.
Q. When did you part with your last interest?
A. I sold my last interest two years ago, in July.
Q. Has your wife any interest?
A. No, sir.
Q. When did she part with her last interest?
A. At the same time.

Recross-examination by C. S. WILSON:

Q. What company do you refer to, Doctor, the Fulton Mining Company, as having had possession of these letters?

A. Yes, sir; it was that company at that time. Since I sold my interests the company has changed its name, and at that time the

month—that is, thirty shifts in the month. They had been working only one-half or two-thirds time, but the wages covered about two months' time—that is, two months' pay.

X Q. And all of this money went to the payment of wages?

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X Q. Yes, sir.

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A. No, sir.

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Q. Dr., what, if any, interest have you in the Standard Mining Company, or in the Johnston or Chatfield mines at the present time?
A. I haven't any.
Q. When did you part with your last interest?
A. I sold my last interest two years ago, in July.
Q. Has your wife any interest?
A. No, sir.
Q. When did she part with her last interest?
A. At the same time.

Recross-examination by C. S. WILSON:

Q. What company do you refer to, Doctor, the Fulton Mining Company, as having had possession of these letters?
A. Yes, sir; it was that company at that time. Since I sold my interests the company has changed its name, and at that time the

company I was interested in was the Fulton Mining Company. I have never been interested in the Standard.

Q. Who was the secretary of the Fulton Company?

A. Mr. Sayer.

Q. Those papers you saw in his possession?

A. It was like this: There were a great many envelopes and papers in the company's office, and, as I was president of the
207 company at that time, when I came to the company's office I would look through the papers and would see various papers in the different envelopes. There were six or eight of them pertaining to the company's business, and in these envelopes, I think, I saw some of Johnston's letters.

Q. And you think you saw some of Johnston's letters acknowledging the receipt of the money and provisions which you sent to him through this man Dustan about the first of July, 1880?

A. Yes, sir; I think that, amongst other things, there were one or two or more of Johnston's letters kept in the envelopes in which these other papers were pertaining to the business of the Fulton Mining Company. I know I saw these letters about three years ago, and I think they are al- together, if my recollection is correct in regard to my giving them to Mr. Sayer, the secretary of the company, at his office.

Complainant calls again for the production of any letters in the possession of Mr. Sayer or the Fulton Mining Company.

Q. I will ask you whether you can approximate the amount of orders which you cashed while you were at Buena Vista, between the time you got there and the time you returned here, about the first of August, 1880—that is, the orders Johnston had given in favor of the workmen.

A. I couldn't swear to the amount.

Q. Can you state *to* the number of orders or the number of men who came to you during that time with orders of that kind?

A. As near as I can recollect, there were four or five individuals.

Q. During these two months?

A. Yes, sir; during the time of June and July.

208 Q. And were any of these men workmen who were working on the mine when you left Aspen?

A. Well, out of those whom I paid there was one, Dustan, and at one time Mr. Acheson paid the men out of money left here. I know I paid Dustan, and these other men—I couldn't recollect whether they were working on the mine when I left here or whether Johnston subsequently hired them. I paid the men all off before I left here.

Q. Had you paid Dustan?

A. No, sir. Dustan was to get his money when he got to Buena Vista.

Q. Do you remember how much money you paid him then?

A. No, sir; I paid him whatever was due him. He used to come every day or two and want money and I would give him a little, and I finally paid him off in full.

Q. To whom did you transfer your stock in the Fulton Mining Company?

A. Well, I sold it to various parties, or it belonged to my wife and she did.

Q. Did she sell to Holden?

A. Yes, sir.

Q. When did she sell to Holden?

A. I sold to him about two years and a half ago, if I recollect right.

Q. Did you part with any of your stock before the settlement with Holden and his parties?

A. Yes, sir.

Q. And who got it?

A. I sold to J. S. Chick.

Q. What proportion of your stock did you sell to Chick?

A. I don't recollect the amount of shares. I forget now what I sold him, but the books of the company will show that, because it was transferred on the books.

Q. And the balance you afterwards sold to Holden?

A. I sold some to Holden, some to Wilson, and some to
209 Thomson and some to Mrs. Thomson.

Q. But the greater part you sold to Chick and Holden, did you?

A. Yes, sir.

EDWARD DUNSCOMB.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, C. S. Wilson, a notary public in and for said county, do hereby certify that the witnesses hereinbefore named came before me on the days aforesaid, and that each of said witnesses before testifying in this cause was severally sworn by me to testify the truth, the whole truth, and nothing but the truth, and that the testimony was under my supervision reduced to writing and severally subscribed by them, and that said testimony so taken, reduced to writing, and subscribed by said witnesses is herewith returned to said the circuit court of the United States in and for the district of Colorado, according to law.

Witness my hand and notarial seal this the 17th day of July, A. D. 1888.

[SEAL.] CHARLES S. WILSON,
Notary Public.

ASPEN, COLO., *July 17th*, 1888.

Notary's fees for taking above depositions, 265 folios, at 20c.- $53 00
Paid by the Standard Mining Co. of Kansas City.

210 (Indorsed:) No. 2244. U. S. circuit court, district of Colorado. John C. Johnston, compl't, *vs.* The Standard Mining Co. of Kansas City *et al.*, def'ts. Depositions of Isaac W. Chatfield, Edward Dunscomb, Dan'l Sayer, and Wm. C. E. Koch, for defendants. Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

And the deposition of James C. Acheson, on behalf of defendants, is in words and figures as follows, to wit:

Deposition James C. Acheson Behalf Defendants.

STATE OF COLORADO, } ss:
County of Gunnison, }

Know all men by these presents that John C. Johnston, Joseph W. Adair, and George Alexander Crittenden, the undersigned, have this fourth day of August, 1880, located and claimed and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress, approved May 10th, 1872, and all subsequent acts and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the J. C. Johnston lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with one hundred and fifty feet on each side of the middle of said vein at the surface so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim 200 feet running S. 60° W. from centre of discovery shaft and 1,300 feet running N. 60° E. from centre
211 of discovery shaft, said discovery shaft being situated upon said lode, vein, ledge, or deposit and within the lines of said claim in the Roaring Forks mining district, county of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, southwest corner post of claim, thence north 60° E. 750 feet to post No. 2, center west side line post of claim, and continued course fifteen hundred feet to post No. 3, northwest corner post of claim; whence bear to ledge of rocks on Mt. Maggie north 18° 45′ west and to peak on Maroon range south 67° 10′ west; thence south 30° east 300 feet to post No. 4, N. E. corner post of claim; whence bear to peak on Mt. Sopris N. 77° west and to precipit-us cliff on Aspen ridge known as Crittenden's peak, south 67° 45′ west; thence south 60° west 750 feet to post No. 5, center east side line of claim, and continued course 1,500 feet to post No. 6, southeast corner post of claim; thence north 30° west 300 feet to post No. 1, to place of beginning.

(Variation, 15° 30′ east.)

All course & bearing are magnetic without the variation. The discovery shaft of this claim is situated on the northwestern slope of Johnston mountain.

John C. Johnston owns one undivided half of said mine; J. W. Adair owns one undivided one-fourth of said mine; C. A. Crittenden owns one undivided one-fourth of said mine.

JOHN C. JOHNSTON. [SEAL.]
G. A. CRITTENDEN. [SEAL.]

Said lode was located on the fourth day of August, A. D. 1880.
Attest: CHARLES ELLITHORP.

Date of certificate, August 4th, A. D. 1880.

212 (Indorsed:) Location certificate on the J. C. Johnston Lode mining claim of Johnston & Co., in Roaring Forks mining district, Gunnison county, State of Colorado.

Location Certificate.

STATE OF COLORADO, } ss:
County of Gunnison, }

Know all men by these presents that Margaret A. Dunscomb, Bella R. Seaver, and John C. Johnston, the undersigned, have this ninth day of June, 1880, located and claimed and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress, approved May 10, 1872, and all subsequent acts and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Smuggler Two lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on the southeast side and 150 feet on the northwest side of the middle of said vein at the surface so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim 197 feet running south 30° west from centre of discovery shaft and 1,303 feet running north 30° east from centre of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit and within the lines of said claim in Roaring Fork mining district, county of
213 Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, from centre of discovery shaft, the line runs S. 30° W. 197 feet to end of entire line; thence S. 60° E. 150 feet — a stake, marked S. E. corner No. 1 Smuggler Two lode; thence from end of centre line N. 60° W. 150 feet to stake No. 6, marked S. W. corner Smuggler Two lode; thence from — N. 30° E. 553 feet to centre of line; thence from middle of centre line S. 60° E. 150 feet to stake No. 2, marked middle stake Smuggler Two lode; thence from middle of center line N. 60° W. 150 feet to stake No. 5, marked middle stake Smuggler Two lode; thence from middle of centre line N. 30° E. 750 feet to end of centre line.

Thence from end of centre line N. 60° W. 150 feet to stake No. 4, marked N. W. corner Smuggler Two lode.

Thence from end of centre line S. 60° E. 150 feet to stake No. 3, marked N. E. corner Smuggler Two lode.

Bearings taken at S. W. corner, stake No. 6.

Amelia rock, Mount Aspin, bears S. 67° 06′ W.

East apex, Red Bute, " " N. 65° 35′ W.

The locators owning the following proportions of Smuggler Two lode:

Margaret A. Dunscomb, three-eight-s ($\frac{3}{8}$) or 562½ linear feet.

Bella R. Seaver, three-eight-s ($\frac{3}{8}$) or 562½ linear feet.

John C. Johnston, two-eight-s ($\frac{2}{8}$) or 375 linear feet.

Variation of compass, 15° easterly.

214 Said lode was discovered on the 15th day of April, A. D. 1880.

MARGARET A. DUNSCOMB. [SEAL.]
BELLA R. SEAVER. [SEAL.]
JOHN C. JOHNSTON. [SEAL.]

Attest: NORMAN F. JENCKES,
U. S. Dep. Mineral Surveyor.

Date of location, April 15th, A. D. 1880.
Date of certificate, June 9th, A. D. 1880.

(Indorsed:) 2821. Location certificate on the Smuggler No. Two mining claim of Dunscomb, Seaver, and Johnston in Roaring Fork mining district, Gunnison county, State of Colorado.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this location certificate was filed for record, in my office, at 7 o'clock a. m., July 8th, 1880, and is duly recorded in Book 8 L, at page 113.

SAM'L B. HARVEY, *Recorder.*

Fees, $2.00, paid.

215 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants. } Stipulation.

It is hereby stipulated and agreed that in pursuance of the stipulation between the aforesaid parties, by their respective counsel, heretofore made and filed in this cause, the deposition of J. C. Acheson may be taken at the office of Offield & Tolle, in the city of Chicago, on or before July 26, 1888, upon the interrogatories and cross-interrogatories to which this is attached, and that all notice of the taking of the deposition and all the formalities incident to the giving of such notice are hereby waived, the solicitors for complainant hereby reserving to themselves the same right of objection to each and all of such interrogatories that they would have if notice of the taking of such deposition had been served upon them and they had been personally present at the taking thereof, and said deposition when so taken may be read in evidence, subject to such objections, in the same manner and with the same effect as if the same had been taken upon notice duly and legally given and commission issued.

Witness our hands this 12th day of July, 1888.

C. S. WILSON,
Of Solicitors for Complainant.

216 CHARLES I. THOMSON,
Solicitor for Defendant The Standard Min. Co. of Kansas City.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States within and for said District.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants.

Interrogatories to be propounded to J. C. Acheson, a witness for the defendant The Standard Mining Company of Kansas City, such interrogatories to be propounded in behalf of said The Standard Mining Company of Kansas City.

Interrogatory first. What is your name, age, and residence?

Interrogatory second. Are you the same J. C. Acheson whose deposition was taken in this cause in the city of Chicago on the 18th day of June, 1888?

Interrogatory third. Please examine the paper attached to
217 these interrogatories endorsed, "Location certificate of the J. C. Johnston Lode mining claim of Johnson & Co., in Roaring Forks mining district, Gunnison county, State of Colo.," and state whether you have ever seen it before and what it is.

Interrogatory fourth. If, in answer to the last interrogatory, you say that you have seen the paper therein mentioned, please state, if you can, when and where you first saw it.

Interrogatory fifth. Was this paper ever delivered to you; and, if so, by whom?

Interrogatory sixth. If, in answer to the last interrogatory, you say that it was delivered to you by John C. Johnston, please state at what time and place and under what circumstances he delivered it to you; also, if you recollect, what Mr. Johnston said at the time he delivered it, as well as everything connected with such delivery or leading up to the same.

Interrogatory seventh. Please state, if you recollect, what you did with this paper after having received it from Mr. Johnston.

Interrogatory eighth. If, in answer to the last interrogatory, you say that you delivered it to Messrs. Taylor and Ashton, of Leadville, Colorado, please state why you delivered it to them and what their business relationship was to you.

Interrogatory ninth. Are you acquainted with the handwriting of John C. Johnston?

218 Interrogatory tenth. State, if you know, in whose handwriting the name of "John C. Johnston" signed to this paper is.

Interrogatory eleventh. Do you know in whose handwriting the name "G. A. Crittenden" signed to this paper is; if so, whose?

Interrogatory twelfth. State what reason, if any, Mr. Johnston gave why the name of Joseph W. Adair was not signed to this paper.

Interrogatory thirteenth. Please examine the paper attached to these interrogatories endorsed "Location certificate of the Smuggler No. 2 mining claim of Dunscomb, Seaver, and Johnston, in Roaring Fork mining district, Gunnison county, State of Colorado," and which purports to have been filed for record in the office of the recorder of said Gunnison county July 8th, 1880, and recorded in Book 8 L, at page 113, and state what it is.

Interrogatory fourteenth. State, if you know, in whose handwriting the name "John C. Johnston" signed to this last-mentioned paper is.

Said defendant offers both said papers in evidence.

Interrogatory fifteenth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHARLES I. THOMSON,
Attorney for the Standard Mining Company of Kansas City.

219 ASPEN, COLO., *July* 5, 1888.

Received a copy of the foregoing interrogatories the day above written.

CHAS. S. WILSON,
Att'y for Complainant.

Complainant objects generally to each and all of the foregoing direct interrogatories for the reason that the witness has already testified concerning all matters covered by these interrogatories, and that he cannot be recalled to go over the same ground.

Complainant further objects to interrogatory sixth for that it is leading and suggestive of the answer which is wanted in mentioning the name of John C. Johnston in the second line of said interrogatory.

Same objection is made to interrogatory 8th in mentioning the names of Messrs. Taylor and Ashton in the second line of said interrogatory.

Complainant also objects to the introduction of the paper which purports to be a location certificate of the J. C. Johnston lode, the same being attached to the direct interrogatories, for the reason that said paper does not have the signature of the locator, J. W. Adair, and is therefore an incomplete certificate.

Cross-interrogatories.

Q. You stated in your former deposition that some of the principal men in the Standard Mining Company were by no means friends of yours. You may now state whether or not your unfriendly relations with them grew out of or are in any way connected with any business transactions concerning your interest or your wife's
220 interest in the Smuggler 2 or the J. C. Johnston mining claim.

Cross-interrogatory two. If you answer the preceeding interrogatory affirmatively, state fully the facts that caused said unfriendly relations.

WILSON & STIMSON &
HUGH BUTLER,
Complainant's Sol'rs.

(Indorsed:) Circuit court of the United States. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Interrogatories. To take the deposition of J. C. Acheson.

United States Circuit Court, District of Colorado.

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*

At Chicago, in the northern district of Illinois, on this 21st day of July, A. D. 1888, before me, Frederick C. Goodwin, a notary public within and for Cook county, Illinois, at the office of Offield & Towle, No. 185 Dearborn street, Chicago, Illinois.

221 And thereupon the following proceedings were had before me pursuant to stipulation and the interrogatories and cross-interrogatories hereto annexed.

JAMES C. ACHESON, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, deposes as follows in answer to the interrogatories and cross-interrogatories:

To the first interrogatory he answers and says: My name is James C. Acheson; age, 39; residence, Chicago, Illinois.

To the second interrogatory he answers and says: I am.

To the third interrogatory he answers and says: I have seen this paper before in the city of Leadville when I made settlement with George A. Crittenden and Joseph W. Adair and took deed from them for their interest in this pretended mining claim called the J. C. Johnston, and this location certificate was handed me by John C. Johnston after such settlement was made with Crittenden and Adair, with the remark that that ended the Johnston claim, or words to that effect. The paper referred to is, as I was informed at the time, the original location certificate of the J. C. Johnston lode.

To the fourth interrogatory he answers and says: I have already answered the question in my previous answer.

To the fifth interrogatory he answers and says: I have also answered that fifth in my answer to the third.

To the sixth interrogatory he answers and says: This location certificate was given to me by John C. Johnston at Leadville, Colo., in the Windsor hotel, in Aug., 1880, and the
222 way in which I came to obtain possession of this paper was two days before this paper was given me I arrived at Aspen, Colo., and found on my arrival there that the mine in which I was interested, called The Smuggler Two, had been jumped by John C. Johnston, George A. Crittenden, and Joseph W. Adair, a new location made covering the Smuggler Two, which was called The J. C. Johnston. I at once started the next morning on horseback for Leadville, where I was informed they had gone to sell this pretended Johnston claim. On reaching Leadville I found they were trying to effect a sale. I immediately hunted them up, told them that such proceedings had to stop, and demanded the surrender of all papers connected with the pretended Johnston claim. After consultation with my attorney, Judge Pendry, Crittenden and Adair wishing to effect a compromise, I agreed to pay them $50.00 and what moneys they had paid out to men working on the mine and for provisions for the mine, which they finally accepted, and made such deed in the office of Judge Pendry. Johnston at the time was confined to his room, having been shot through the foot, and after Crittenden and Adair had made this deed I then went down to the Windsor hotel to see Johnston, and at that time he handed over to me this location certificate, with the remark that this was the end of the Johnston claim. He said Adair had not signed this certificate, but intended to do so.

To the seventh interrogatory he answers and says: I thought I had destroyed it, but now recollect that when questions of lawsuits came up in regard to this property that I gave it, with other papers connected with my Colorado business, to Taylor & Ashton, of Leadville, Colo., attorneys, whom I had employed.

223 To the eighth interrogatory he answers and says: I delivered it to them because some complications arising made it necessary for me to employ a lawyer to look after my interests, and I naturally gave my lawyers all the papers connected with the case.

To the ninth interrogatory he answers and says: I am.

To the tenth interrogatory he answers and says: It is signed by John C. Johnston.

To the eleventh interrogatory he answers and says: It is signed by George A. Crittenden.

To the twelfth interrogatory he answers and says: He gave no special reason; only said Adair was to sign it.

To the thirteenth interrogatory he answers and says: That is the original location certificate of the Smuggler Two mine.

To the fourteenth interrogatory he answers and says: It is in John C. Johnston's handwriting.

To the fifteenth interrogatory he answers and says: I think I have covered all the ground in this and in my former deposition.

To the first cross-interrogatory he answers and says: My unfriendly relations with these men grew out of their attempt to defraud myself and partners of our entire rights and interest in the Smuggler Two mine by setting up a pretended claim called the J. C. Johnston.

To the second cross-interrogatory he answers and says: In addition to my answer to the previous interrogatory I would
224 state that they entered into a conspiracy to cheat me out of my interest in the property, the full history of which I do not consider pertinent to this case.

JAMES C. ACHESON.

Subscribed and sworn to this 21st day of July, A. D. 1888, before me—

[SEAL.] FREDERICK C. GOODWIN,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Frederick C. Goodwin, a notary public in and for the county of Cook, in the State aforesaid, do hereby certify that the foregoing deposition of James C. Acheson was taken before me at the time and place therein specified, pursuant to stipulation and interrogatories and cross-interrogatories hereto attached, by consent of counsel made a part of this record; that before deposing the said James C. Acheson was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause now pending in the United States circuit court for the district of Colorado wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City *et al.* are defendants; that said deposition was reduced to writing from the statements of said witness and the same duly subscribed and sworn to by him, as therein appears.

And I do further certify that I am neither attorney nor of counsel for any of the parties in said deposition or caption
225 named and am in nowise interested in the result of said cause.

[SEAL.] In testimony whereof I have hereunto set my hand and notarial seal this 21st day of July, A. D. 1888.

FREDERICK C. GOODWIN,
Notary Public.

Notary fees for writing & certifying said deposition, $5.00, paid by defendant's counsel.

FREDERICK C. GOODWIN,
Notary Public.

(Indorsed:) 2244. Circuit court U. S. John C. Johnston *vs.* The Standard Mining Co. *et al.* Deposition—James C. Acheson—and exhibits for defendant. Filed Aug. 31, 1888. William A. Willard, clerk.

And the deposition of Joshua W. Dustin on behalf of complainant is in words and figures as follows, to wit:

Deposition Joshua W. Dustin Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States, Sitting at Denver.

226 JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants. } No. 2245.

Deposition of the witness, Joshua N. Dustin, produced, sworn, and examined the twenty-eighth day of July, A. D. 1888, at the city of Aspen, county of Pitkin and State of Colorado, under and by virtue of the verbal stipulation made and entered into between C. S. Wilson, Esq., of counsel for complainant, and C. I. Thomson, counsel for the defendant The Standard Mining Company of Kansas City in a cause pending in the circuit court of the United States for the district of Colorado, sitting at Denver, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City and others are defendants.

JOSHUA N. DUSTIN, of the county of Lake, in the State of Colorado, a witness produced on the part of the complainant in rebuttal, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, deposeth as follows:

Direct examination by C. S. WILSON, Esq.:

Q. Please state your name, age, residence, and occupation.
A. Thirty-one years old; a fireman on the Midland railroad is my occupation; residence, Leadville, Colorado; Joshua N. Dustin.
Q. Did you ever live in Aspen, Colorado?
A. Yes, sir.
Q. When did you first come to Aspen?
A. I came here in the spring of 1880.
227 Q. And who did you come in with?
A. I came here with Doctor Dunscomb.
Q. Did you ever do any work on a claim called the Smuggler 2, in Aspen or near Aspen?
A. Yes, sir.
Q. In whose employ were you?
A. Well, I was in the employ of Dunscomb, Seaver and Johnston.
Q. About how long did you work on that property?
A. I think nearly two months to the best of my recollection.
Q. That is altogether?
A. Yes, sir.
Q. Did you work continuously or did you stop work at any time?
A. Well, I was working. I was under their employ, but was away

from here. I do not know that I worked just exactly two months—I think nearly two months—for them.

Q. While you were working for them, did you at any time leave Aspen; and if so, with whom did you go and where did you go?

A. I left Aspen shortly after I got in here and went to Buena Vista with Doctor Dunscomb and Seaver—James Seaver.

Q. About what time was that with reference to the survey and location of the Smuggler 2, if you remember?

A. The Smuggler 2 was surveyed—I do not recollect the date, but we surveyed it one day and the next day we started; the next day or next day but one. I would not be positive that it was the next day, but I think it was.

Q. Can you state about how long you had been working for them before you went out to Buena Vista?

A. No, sir; I cannot.

Q. Had you been working from the time you came in with Dunscomb until that time that you went out?

A. Yes, sir.

228 Q. How many men were employed during that time on the Smuggler 2, if you remember? Do you remember who they were by name, any of them?

A. I do not recollect but two by name, besides myself.

Q. And who were they?

A. John Gould was one, and I can't think of the other fellow's name; Lew something; I cannot recollect his last name.

Q. Were there any others whose names you do not remember?

A. Well, I would not say positively that there were.

Q. Was there more than one shift working on the mine?

A. I think so—two; two shifts, I think, but who they are I do not know. I do not recollect the other fellows.

Q. You do not know how many men to a shift?

A. There was two of us.

Q. When you went out for what purpose did you go?

A. Well, we was going for provisions, for one thing, and Seaver was sick with mountain fever, I think, was what Doctor Dunscomb said was the matter with him; to take him out.

Q. Did you take any animals with you?

A. Yes, sir.

Q. What animals?

A. Four horses and three jacks, I believe.

Q. How long were you going to Buena Vista, about?

A. Three days, I think.

Q. And how many days did you remain there?

A. I think about eight days.

Q. At the time you left Aspen I will ask you whether or not there was any money owing you for wages.

A. Yes, sir.

Q. Had any money been paid you for wages at that time?

A. No, sir.

Q. How was it with the other men on the mine, do you know?

A. Them that I knew hadn't received any money at that
229 time, to my knowledge.

Q. Do you know whether at that time any bills had been incurred for provisions or supplies in town here for the mine?

A. I think not.

Q. When you got to Buena Vista what was done with the pack animals?

A. Well, the jacks were sold or disposed of in some way; I do not know that they — sold. I did not take them back with me.

Q. What animals did you take back?

A. Three horses.

Q. Do you know what became of the other horse?

A. I think it was kept there; I would not be positive.

Q. What provisions did you bring back, if any?

A. Flour and bacon was the principal load. I think I may have brought some powder; I am not positive; brought just flour and bacon.

Q. What amount of provisions, about?

A. In money or weight?

Q. In money or weight.

A. Oh, I should think four hundred and fifty pounds, or might be more than that; might not have been quite that.

Q. Just an ordinary load for three animals?

A. Yes, sir.

Q. And what was an ordinary load for an animal over that road at that time?

A. Well, about one hundred and fifty pounds.

Q. How was the road?

A. It was pretty bad. There was no road out until you got to Bowman's. There was a wagon road to Bowman's, and the balance of the way there was nothing but a path.

Q. Do you know who owned these three animals—these three horses that you brought back?

A. Well, no, sir; I know it was said by the other parties—I
230 heard them talking—that one of them belonged to Mr. Johnston and the other two belonged to the other three men.

Q. Which one belonged to Johnston, if you remember?

A. A brown mare.

Q. Now, while you were out did Doctor Dunscomb pay you any wages?

A. Yes, sir.

Q. What amount of wages?

A. He gave me $50.00, a check on a Buena Vista bank for $50.00.

Q. Was there any balance coming to you besides that?

A. Yes, sir.

Q. How much of a balance?

A. I do not recollect.

Q. How long after that, after you came back, did Acheson come to town, if you ever come to Aspen?

A. I do not recollect.

Q. Did Doctor Dunscomb, while you were out, give you any money besides this $50.00 check for any other parties?

A. Yes, sir.

Q. What was it?

A. To buy feed for the animals while I was stopping at Buena Vista.

Q. Did he give you anything besides that?

A. No, sir.

Q. Did he send any money to Johnston to pay the men or any money for the men by you?

A. No, sir.

Q. Do you remember anything about the time or the circumstances of the location of the J. C. Johnston mine, covering the ground on which the Smuggler 2 was located?

A. Yes, sir.

Q. Please state what you know about that.

A. I know in regard to some men having their pay. There was dissatisfaction about the men getting the money, and there was some kind of an arrangement made with Adair and Crittenden to take the property, and it was to be relocated, I think, and to settle up all the old accounts.

Q. What was the cause of this dissatisfaction?

231 A. Well, the other parties was away and hadn't come up according to agreement and there had to be something done.

Q. How much wages, if any, were due at the time of the location of the Johnston—for how long a time?

A. I think the indebtedness was somewhere between $800.00 and $900.00; somewhere along there.

Q. Did you ever receive your wages any more than what Dunscomb had paid you at Buena Vista?

A. No, sir.

Q. And how much was there owing you altogether?

A. Up to that time?

Q. Yes; up to that time.

A. I think the balance due was $63.00.

Q. How do you recollect that fact?

A. Well, I think it was $15.00 costs. I know I sued them and got judgment against them, and then it was $78.00, the costs and the bill. I think the costs was $15.00, but I would not be positive.

Q. Did you ever collect the judgment?

A. No, sir.

Q. So that you have never had your pay for that balance?

A. No, sir.

Q. How was it with the other men; did they bring any suit, do you know?

A. I do not know. I think not, but I would not be positive.

Q. Now, I will ask you when you first saw Acheson in Aspen, as near as you can recollect. If you do not recollect the date, perhaps you can connect it with some circumstance.

A. It was shortly after I had come in with the provisions from Buena Vista. I could not recollect the date.

Q. Do you know what he did at that time about the men
232 or about the payment of any bills?

A. I think he paid Mr. Johnston a little money at that time.

Q. Do you know what Johnston did with the money?

A. He paid, I think, some of the men and he owed a few small bills here in town.

Q. Was that amount enough to pay the wages and bills that were due in town?

A. No, sir.

Q. Do you know about how much that was; how much money he did pay?

A. I think it was $75.00, but I would not be positive. I was in the cabin at the time he paid it to him, but I do not recollect.

Q. About how long did Acheson remain at that time, if you know?

A. I do not recollect how long he did remain.

Q. Did you see Acheson about the time or shortly after the time of the relocation of the ground — as the J. C. Johnston?

A. Yes, sir.

Q. Where was it you saw him?

A. I saw him in Aspen.

Q. At that time did Acheson have any money with him?

A. Yes, sir.

Q. And at that time was there anything owing for wages and supplies?

A. Yes, sir.

Q. I will ask you whether at that time he paid any of these bills.

A. He did not pay me.

Q. He still owed you, did he?

A. Yes, sir.

Q. And did he and his partners owe at that time this balance of $63.00?

A. Well, it was that. It was work I done there on the property. It was either them or the other, Crittenden, Adair, or Johnston.

Q. The mine owed you that?

233 A. The mine owed me that money; yes, sir.

Q. How much did — have with him, if you know?

A. I saw him have between $600.00 and $800.00.

Q. What did he do with it?

A. He lost it playing poker.

Q. Where was that?

A. Up here on Dean street, in Guard's saloon—Guard's and Bennett's—and Bell and Dustin's saloon at the time.

Q. Were you present at the time he was playing the game?

A. I was.

Q. Did he lose just what he had or more than he had?

A. Well, he lost all he had and he played until he got in debt, for all the boys would stand and he could not play any longer. I do not know whether he had any more money or not.

Q. Did you see anything of Dunscomb at that time?

A. No, sir.

Q. At that time were there any bills owing around town for groceries or supplies that the mine owed, do you know?

A. Yes; there were some bills owing at that time.

Q. Do you know what amount of bills?

A. I do not.

Q. Do you know when these bills were paid, if they were paid?

A. I do not know that they were paid.

And further witness saith not.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, James B. Knoblock, a notary public in and for said
234 county, do hereby certify that the witness, Joshua N. Dustin, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause: That said deposition was taken at the office of the Percy Consolidated Mining Company, in the town of Aspen, State of Colorada, at the hour of three o'clock p. m., July 28th, A. D. 1888, pursuant to stipulation and agreement of counsel as aforesaid; that said deposition was so taken by me in short-hand upon oral interrogatories propounded to said witness by said counsel as aforesaid, and after said testimony was so taken the same was by me transcribed as hereinbefore appears, and that the above and foregoing is a true, correct, and accurate transcript of said testimony as given, and that by stipulation of counsel for the respective parties the signature of said witness to the foregoing deposition was specially waived.

I do further certify that I am neither of counsel nor kin to any of the parties to the above-entitled action, and have no interest whatever in the result of said suit.

In witness whereof I have hereunto subscribed my name
[SEAL.] and affixed my seal of office this 30th day of July, A. D. 1888.

JAMES B. KNOBLOCK,
Notary Public.

My commission expires June 22d, 1892.

It is hereby stipulated and agreed that the above and foregoing certificates of the notary public correctly state the facts pertaining to the taking of said deposition, and we hereby waive all formalities to the taking of said deposition as to the manner and
235 time, and we hereby waive the signature of said witness to his deposition.

Dated the 30th day of July, A. D. 1888.

CHARLES S. WILSON,
Sol'r for Compl't.
CHARLES I. THOMSON,
For Def't, The Standard Mining Co.

Transcribing 27 folios of testimony, at 20 cents per folio,--- $5 40
To taking the same in short-hand and all services as notary- 2 00

Total---------- $7 40

Received payment of plaintiff,

JAMES B. KNOBLOCK.

(Indorsed:) 2244. Circuit court of the United States. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Deposition of Joshua N. Dustin, for complainant. Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

And the deposition of John C. Johnston on behalf of complainant is in words and figures as follows, to wit:

Deposition John C. Johnston Behalf Complainant.

236 United States Circuit Court, District of Colorado.

JOHN C. JOHNSTON,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, *et al.*

The deposition of John C. Johnston, complainant, in the city of Aspen, county of Pitkin and State of Colorado, produced, sworn, and examined upon his oath upon the 3rd day of August, A. D. 1888, at the office of The Percy Consolidated Mining Company, by me, Charles S. Wilson, a notary public, in pursuance of the annexed stipulation between parties in the above-entitled cause for the examination of the said John C. Johnston, complainant.

The said JOHN C. JOHNSTON, being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties so far as he should be interrogated, testified as follows:

Direct examination by C. S. WILSON, Esq.:

Q. I will ask you, Mr. Johnston, whether any of the money that was paid by your partners, Dunscomb, Seaver, or Atcheson, was applied by you for your own wages for working the Smuggler 2; if so, how much.

A. Mr. Atcheson paid me $25.00 at Leadville after this compromise and Dr. Dunscomb's wife sent my wife $25.00 from Buena Vista.

237 Q. And was that the extent of the wages received by you?

A. That is all I remember of having received.

Q. What was done with the rest of the money received from Dunscomb, Atcheson, and Seaver?

A. We applied it on the expenses of the mine; paid wages, paid for supplies, cars, and tracks.

Q. As between Dunscomb, Atcheson, and Seaver which of them paid the money?

A. Dunscomb paid me all the money I ever received; I do not remember of having received any from any of the other gentlemen except $75 or $80 that Mr. Atcheson paid when he came in.

Q. In July?

A. Some time in the month of July, 1880.

Q. As you have already testified?

A. Yes, sir.

Q. Did Seaver pay you any money at all?

A. Mr. Seaver and I came over to this country in the winter of 1880—I think it was in January—from Denver. Mr. Seaver bought an outfit, some snow-shoes, &c., and we came over to Twin Lakes and started over here on snow-shoes; Mr. Seaver came about half way to the top of the range—I don't remember exactly how far—and he concluded he could not make the trip and prevailed upon me to come over alone; I concluded to come. I think he was to give me $100.00 to make the trip and relocate this ground that I held; of course, the time had expired. I came over here and stayed two or three weeks and done some work; relocated and hired some work done; went back. Mr. Seaver stopped at Twin Lakes during this time, and he and I went back to Denver, and after that we entered into the grub-stake contract, and Dr. Dunscomb never paid me any money.

Q. Did Seaver pay you the $100?

A. Yes, sir; I think it was $100.

238 Q. And was that before you entered into the grub-stake contract?

A. Yes; the January or February previous.

Q. Now, I will ask you what orders, if any, you sent to Dr. Dunscomb while he was out at Buena Vista in favor of workmen for wages?

A. I do not remember ever sending any orders to Dr. Dunscomb or any one else by men we were indebted to after they went out from here. I wrote Dr. Dunscomb letters—I do not know how many, a good many—explaining matters and asking for money and grub and everything else that was necessary.

Q. What books or accounts did you keep showing the wages and accounts of the men when you were working it?

A. Why, I kept a day book—kept the accounts in there—and time book. I think I kept it all in the same book.

Q. Where is that book, if you know?

A. Well, my recollection is, I left it with Thompson and Sayer.

Q. At what time?

A. Well, I think it was in the fall of 1880; during the month of October.

(Complainant calls for the production of the time book mentioned by the witness.)

A. (continued). My recollection is also that I left Dr. Dunscomb and probably Mr. Atcheson's letters with Thompson & Sayer at that time or sent them to them afterwards.

Q. And what other papers, if any, did you leave with Thompson and Sayer?

A. Well, I have stated in my direct examination all the papers I left except these letters and day books and those contracts.

Q. Now, when Atcheson was here in July and paid a small amount of money what, if you know, became of the rest of
239 the money that he brought here at that time?

A. Why, he told me when he first arrived that he brought in money to square up all indebtedness. There was one man who had been on a tare for a few days, and he demanded his money immediately, and Mr. Atcheson gave me $75 or $80 to finish paying him up, and said he would pay the men all next morning, and when I came to settle up next morning he told me he had a little bad luck the night before; got into a game of cards and lost the money, but as soon as he got back to Buena Vista he would send the money back to pay the men with.

Q. Know how much he had; how much he lost?

A. He claimed 800 or $900. I don't know how much he had; I didn't see it.

Q. What was the condition of the workings and of the vein, if there was any vein, at the time that Mr. Atcheson first examined it in July?

A. Well, when Mr. Atcheson was here there was no vein. We had some ore, of course. We called it a mine. We had struck some ore. In fact, we had been getting ore along the slide for some time; ore, probably 30 feet before we came into a body of ore, along the slide and loose rock; lumps of ore; pieces of ore. That is what we had when Atcheson was there.

Q. Did you hear James Millar's testimony yesterday?

A. Yes, sir.

Q. He referred to you having been hurt. Can you state when that was and how it happened?

A. Well, at the time we struck this body of ore. It must have been about the middle of July; between the 15th and 20th; maybe a little bit later than that. There was considerable excitement about it, and some parties jumped the Kansas City, now known as the Chatfield. I made a kick against it and went over there
240 and got into a racket, and the result was I got hurt—accidentally, though.

Q. But that was the first body of ore?

A. That is the first body of ore we found; yes, sir.

Q. How long after that was it that you made the agreement with Crittenden and Adair for the relocation of the J. C. Johnston?

A. I think it was about two weeks. Now, at the time we struck this ore, of course you could not call it a vein; it was a great big pile of ore in loose formation. In the upper workings, a man could not say it was solid formation, but we called it a vein or ledge.

Q. Who were the parties that tried to jump the Kansas City?

A. I think one man's name was Cree and old —— did the jumping.

Q. What did they call their location, if you remember?

A. I do not remember positively, but seems to me it was Defiance or something like that.

Q. Had they filed any location certificate?

A. Not that I know of.

Q. How long did their claim or location last?

A. Well, sir, I could not state. I was confined to my cabin after that continuously; did not know whether they left it. I know they left that day, but do not know whether they stayed away or not.

Q. When was it with reference to the time that you employed James Miller?

A. I think I employed Miller a few days after I got hurt; probably a day or two.

Q. For what purpose?

A. I employed him to guard the property—he and another fellow.

241 Q. How much were you hurt?

A. Why, I was shot through the foot—big toe was shot off, and I had it cut out and set back.

Q. At the time of finding this body of ore, as you call it, how long had you been carrying the mine on your own credit?

A. Well, except the little grub that the man Dustane brought in, I was carrying it from the time they went out up to that time. They went out about the first of June, and that was along in August.

Q. And you were trading with Crittenden, were you?

A. Yes; trading with him partly.

Q. Anybody else?

A. I am under the impression that I traded some with the other store, but could not say how much. Wheeler & Lee, I think it was.

Q. How many animals did Dustane bring back here?

—. Brought 2.

Q. Were they both packed?

A. I think they were.

Q. I will ask you whether Crittenden and Adair actually paid any bills or whether they only assumed the debts.

A. Well, they paid some bills, but I do not know whether they paid them all or not; any way, they settled the bills; paid one man that went up with me, by the name of Kelly; paid him his money; but they had not paid this man White, but were to pay him at Leadville. He went out with me; also the men that remained here and worked. They made some settlement with them, but I do not know whether they paid them or not. They fixed it up so they were satisfied.

Q. I will ask you, at the time of settlement between Atcheson and Crittenden and Adair,— Atcheson actually paid the bills paid

242 by Crittenden and Adair or only assumed by them, or whether he simply assumed part of the debts, if you know.

—. As far as I know, he assumed the debt to Mr. White; paid part of it and assumed the balance

Q. How about the other debts; did he pay Crittenden and Adair in cash for any of them or simply assume them?

A. Well, now, I could not state as to that; all I know, it was settled between them. My understanding was that he paid Atcheson and Adair $1,000. Whether that included the indebtedness, or whether he assumed a portion of the indebtedness, or whether he paid that amount, I could not state.

Q. Do you know where Atcheson went immediately after that settlement?

A. No, sir; he told me he was coming to Aspen, and that he would come from Aspen to my house.

Q. Did he tell you for what purpose he was coming to Aspen?

Q. I do not remember, but he was coming over here to straighten things up. I think he hired horses; something of that kind.

Q. Do you remember these men that have been mentioned by the witnesses, Dustane and Miller—that is, John Gould, Case, Laplander, and Scotty?

A. Yes, sir; I remember them.

Q. Do you know where any of them are at present?

A. No, sir; I do not. Millar, of course, is here in Aspen. Dustane was here the other day. I understand he lives in Leadville; balance I do not know anything about. Oh, yes, White, I know where he is.

Q. Now, I want to ask you if you know anything about the location certificate of the Johnston mine; what do you remember about it and what you did with it?

243 A. Well, I remember that there was a certificate made out, and after we all got together we concluded there was a mistake made in it and we made another and all signed it and I retained it. I might have retained both, and if I did I turned it over to Mr. Chatfield, the original certificate, after we made the sale, and Chatfield, or Wilson, or one of us placed it on record. I turned it over to Mr. Chatfield. It was sent in the same envelope with the bond to Gunnison to be recorded. This old certificate that has been brought up, there was a mistake in it; we concluded it was a mistake. It did not correspond with the Smuggler 2, and so we made another. We all signed it—Mr. Adair, myself, and Mr. Crittenden.

Q. I will ask you if you know who drew the deed, or the original of which this is a copy (showing witness copy of deed, Crittenden & Adair to Atcheson).

A. Why, Mr. Atcheson, I think, drew it, to the best of my knowledge.

Q. In drawing that deed did he have the location certificate to go by?

A. He had the location certificate that I afterwards had sent off to Gunnison.

Q. How did Atcheson come by the other certificate, if you know?

A. I do not know; he never got it through me. If I had it in my possession I turned it over to Chatfield or Thompson & Sayer.

Q. You turned the certificate over to Thompson and Sayer; did you ever see it again, the original?

A. I do not think I ever did.

Q. And that was at the time that the title bond was sent for recording to Gunnison?

A. Yes, sir; Mr. —— was present in the office of General Brown, and the paper was drawn up and executed and the certifi-
244 cate and title bond were enclosed together in the same envelope and sent on for recording, to the best of my recollection.

Q. Were these papers—the title bond and location certificate—used in Leadville or produced at the consummation of the sale to Chatfield and the examination of the deed by you and Chatfield in October, 1880, at Leadville?

A. I do not think they were; I do not remember anything about it. I do not think they were; I do not remember of seeing them.

(Complainant calls for the production of the location certificate which the witness says he gave to Chatfield.)

Q. What, if anything, was said by you to Mr. Atcheson about abandoning the J. C. Johnston claim at the time of this transaction at Leadville between you and him and the other parties?

A. Why, I told Mr. Atcheson when he paid me my wages and paid up the debts of the company I would destroy the certificate and abandon the claim of the J. C. Johnston and go back to the original location. He agreed to do it and to come to my house the following Saturday or in a few days and pay me the money, and I would return to Aspen and resume work as before.

Q. Anything about your making a deed to him?

A. My recollection is he brought up a deed and wanted me to sign it, and my impression was I was going to get the money right there. After the deed was drawn I did not get my money and would not sign it until I got it. Mr. White made a kick and he finally paid $100 or $150.

Q. Do you know whether Mr. Atcheson brought the money in currency from Aspen or whether he be brought it to Leadville to pay you?

A. I do not know where he got the money or whether he had it. He claimed he did not have the money.

245 Q. What about any other sale that you had on foot at Leadville at that time of the J. C. Johnston.

A. Why, Crittenden and Adair had agreed to make a sale to some parties there and brought the papers in for me to sign and I refused to sign them. The sale did not suit me and Mr. Atcheson was there and so I did not sign the papers. Mr. Atcheson was in the room at the time. He was there when the papers were first brought in. When we talked the matter over he came in and sat in the room during the conversation between myself and Crittenden.

Q. Now, referring to this transaction between you and Mr. Chatfield at Leadville, how much of that business was carried on in Chatfield's store and how much in Thompson and Sayer's office?

A. Well, the deal was all made in Thompson & Sayer's office. There was no trade made in Mr. Chatfield's store and I never signed

any papers in Mr. Chatfield's store. We might have had a little talk in the store, but the deal was all consummated in Thompson & Sayer's office, except the quarter interest in the first sale, and that was all done in General Brown's office in Denver and Mr. Chatfield was present.

Q. How long a time did the business take in the office of Thompson and Sayer, or how many times did you go out and come in again during the transaction?

A. I cannot remember the exact time; some two or three hours, probably; maybe longer. We went down once—probably twice; I don't know; took some refreshments.

Q. What were they?

A. I do not remember what the gentlemen drank. I think Sayer and I drank whiskey.

246 Q. Do you remember who paid the bill?

A. No; I don't.

Q. I will ask you, Mr. Johnston, whether you made any mention to Mr. Atcheson or Thompson & Sayer that you owned the whole Johnston mine, and that you gave your deed for the whole mine?

A. No, sir; Mr. Chatfield saw the location certificate and knew all about it and Mr. Thompson and Mr. Sayer also—that is, if they believed what I told them Mr. Chatfield had seen the location certificate—and General Brown drew the bond from the location certificate.

Q. Did you have any stated times or any pay days for paying your bills on the Smuggler 2?

A. No, sir; it was understood when we went to work that we were to be paid every month.

Q. How was that understanding carried out?

A. Well, it was never perfected while I was managing.

Q. Just paid as you were able to, did you?

A. Paid just what we had and what we could get and let the balance go unpaid.

Q. Did Chatfield see this mine before purchasing the interest that he got of you?

A. I think he did; he was over here and Mr. Wilson was here, too.

Q. Do you remember Mr. Sayer's testimony about the conversation you had with him in Denver shortly after your giving your testimony there?

A. Why, I remember something about it. I do not think it amounts to anything; it might have been some little conversation, but I would not consider it cut any figure in the case; we were both drinking at the time.

Q. Do you remember what you told him?

A. Why, I had some talk about his evidence; told him in a joking way, of course—he did not get offended at it—that he

247 told one truth. I think it was one truth.

Q. Tell him anything else?

A. Oh, I do not remember. I do not think it would cut any figure.

Q. What truth did you refer to?

A. When he was on the witness stand down there.

Q. What did you refer to by the one truth?

A. I disremember now; don't know as I told him or explained to him what it was.

Q. Well, do you desire to make any explanation in regard to the original bill in equity which was filed by your attorney, Mr. Northrop, in the U. S. court and sworn to, I think, by you, which was also a suit for the recovery of an interest in this property?

A. Well, when I signed that bill I signed it about the way all such papers are signed. I signed the bill and Mr. Northrop put his seal to it, and he explained those things to me differently from what they appeared to me. We made a great many corrections in it, and one of them about striking or cutting the ledge after the J. C. Johnston was located, and it might turn out to be true yet. I could not swear positively that we cut the ledge at all. The lower tunnel was driven and we cut through some ore, found some ore, some in the slide, and started a winze over there and found little bunches of ore here and there in lumps.

Q. I will ask you whether the condition of the working and the mineral and of the development of the property at or just before the time of the relocation of the Johnston mine had anything to do with the location of the Johnston claim; whether it was because you did not consider the Smuggler 2 a valid location or whether it
248 was because of the fact that you considered that you had been deserted by your partners.

A. No, sir; it was because I considered that those gentlemen had not complied with their contract; I had to raise money to settle the accounts of the property and to protect myself.

Q. Did the recent strike, so called, in the property enable you or have anything to do with your ability to interest other parties in the property so as to raise the money?

A. Why, it had its influence—yes, sir. The camp was running at a pretty low ebb just before we struck that body of ore over there.

Q. Did this plan or proposition of relocating the property and calling it the J. C. Johnston originate with you or your new partners, Crittenden and Adair?

A. Well, it came about in conversation between myself and Mr. Crittenden. I do not know who originated it. Mr. Crittenden wanted his money and the men wanted their money. Some of the men were kicking—in fact, all of them—and this was the plan we adopted to raise the money and settle the bills. Mr. Crittenden's bill was, of course, the largest bill we owed—the plan that I adopted after thinking the matter over and conversing with Mr. Crittenden.

249 I, Charles S. Wilson, of the city of Aspen, county of Pitkin, State of Colorado, a notary public in and for said county and State aforesaid, and duly appointed by the annexed stipulation to take the deposition of the complainant, John C. Johnston, *and* certify that before the commencement of his examination as witness in said cause between the said J. C. Johnston, the complainant, and the

said The Standard Mining Company of Kansas City, one of the defendants, he, the said complainant, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties so far as he, the said John C. Johnston, should be interrogated concerning the same.

That the said deposition was taken at the office of the Percy Consolidated Mining Company in Aspen, Pitkin county, Colorado, on the 3rd day of August, A. D. 1888.

CHARLES S. WILSON,
Notary Public.

[SEAL.]

Fees for cost of short-hand work and transcribing the foregoing testimony, 42 folios, $8.40.

Paid by complainant.

[SEAL.]

C. S. WILSON,
Notary Public.

Stipulation.

It is bereby stipulated and agreed by and between the complainant and the defendant The Standard Mining Company of Kansas City in the above cause that the foregoing deposition may
250 be read and used in evidence in said cause without objection except as to the objections made and noted in said deposition.

That the signing of said deposition of said complainant is hereby expressly waived.

CHARLES S. WILSON,
For Complainant.
CHAS. I. THOMSON,
For the Standard Min. Co. of Kansas City.

(Indorsed:) No. 2244. U. S. circuit court. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.*, def'ts. Deposition of complainant (in rebuttal). Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

And the deposition of James Millar, on behalf of complainant, is in words and figures as follows, to wit:

Deposition James Millar Behalf Complainant.

United States Circuit Court, District of Colorado.

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.* } Cause No. 2244.

The deposition of James Millar, in the city of Aspen,
251 county of Pitkin, State of Colorado, a witness of lawful age, produced, sworn, and examined upon his oath on the 3rd day of August, A. D. 1888, at the office of the Percy Consolidated Mining Company, by me, Charles S. Wilson, a notary public, in pursuance of the annexed stipulation between parties in the above-entitled cause for the examination of the said James Millar.

The said JAMES MILLAR, being first duly sworn by me as a witness in the said cause, before the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties so far as he should be interrogated, testified as follows:

Direct examination by C. S. WILSON:

Q. Mr. Millar, please state your name, age, residence, and occupation.

A. Name, James Millar, not M i l l e r, but a r; born in Canada; and my residence is here in Aspen; and my occupation mining.

Q. In what year were you born in Canada?

A. 28th of July, '44; that is what my mother told me and I suppose it's right.

Q. How long have you lived in Aspen?

A. Since 1880.

Q. Were you acquainted with a piece of property here known as Smuggler 2?

A. Yes, well.

Q. Did you ever work on that property?

A. Yes, sir.

Q. When was it?

A. The latter part of July or the 1st of August; I would not be positive about dates; that part I am not certain about; I think it was the first of August.

Q. In what year?

A. 1880; summer of 1880.

Q. How long did you work on that property?

A. Up till November; pretty near the first of December; Dr. Dunscomb sent over $50.00 by Billie Coe for me to pay my
252 way to get over there, and I borrowed $11 of Charlie Jacobs.

Q. Was this when you went to work?

A. No; when I went to Buena Vista.

Q. When was it?

A. The latter part of November, somewheres before Christmas; I know that.

Q. Who employed you on the Smuggler 2?

A. Mr. Johnston and Joe Adair and Crittenden; Adair was really the man that spoke to me. Mr. Johnston got wounded in the foot and I heard their conversation; they said, "Take Millar." There was some racket between him and what is called the Defiance, and Johnston was trying to protect the ground. That is all.

Q. That is when you first went to work?

A. The time I first went to work.

Q. And that is the way you happened to be employed?

A. Yes; that is the way it was; they spoke to me and Johnston came over to see me; I suppose it was agreeable to them; I do not know.

Q. Were you there at the time of the location of the J. C. Johnston claim?

A. I was there about that time; let me see—yes, I think I was there; I was there. This man Ellithorp did the surveying. The line did not vary only a few inches between the Smuggler 2 and the J. C. Johnston.

Q. How long was it after you had been at work for Johnston on the Smuggler 2 that the J. C. Johnston claim was located?

A. Right about that time; was not previous to that very much. Whatever time Johnston got his foot wounded I went there after that; I am not certain about dates.

Q. Do you recollect the occasion and circumstance of the J. C. Johnston location over the Smuggler 2?

253 A. Well, I was sitting one day in Crittenden's office, and it appeared that Mr. Johnston had given Mr. Acheson a power of attorney and he was trying to have it revoked. There was a power of attorney and he was kicking about it—he refused—he had it revoked. I remember that distinctly.

Q. That was about the time of the location of the J. C. Johnston?

A. Yes, sir; and Mr. Crittenden, myself, and Adair discovered a flaw in the location of the Smuggler 2—that was our imagination—and located the J. C. Johnston.

Q. Do you know when mineral in place was first struck on Smuggler 2?

A. Mr. Johnston struck that in the 70-foot tunnel.

Q. Do you know when it was?

A. That was in July; yes.

Q. I will ask you at the time you went to work, at the time you first went to work for Johnston, — mineral in place had been struck.

A. Johnston run the tunnel that is now known as the upper tunnel and discovered mineral. He came very near missing it, though, I tell you; if he had been a little higher he would have got left. I and Joe Adair took a look at it; I spoke to him and, said I, "Joe" (he was working for this here Josephine Company), "you want to get

an interest in this Johnston," and he said, "I will try," and, said he, "Millar, I want you to help me," and I said, "I will do it," and we went over and examined it and there was mineral and plenty of it.

Q. That was when?

A. Latter part of July or middle of July; I am not certain about dates; I will not agree to dates.

Q. Did you have anything to do with the survey of the J. C. Johnston?

A. No, sir; I had no hand in that job at all.

254 Q. Do you remember the time when Johnston and Crittenden and Adair went to Leadville, shortly after the location of the J. C. Johnston mine?

A. Yes; I was in charge of the property when they went to Leadville to see that nothing happened to it.

Q. Do you know who the locators of the J. C. Johnston mine were?

A. I think it was Crittenden.

Q. Crittenden and Johnston?

A. That part I am not certain about. I would not swear to that.

Q. Well, did Johnston have an interest in it?

A. Johnston was to have ½ and Crittenden and Adair the other ½.

Q. That was the way it was located?

A. That is what I understood. I would not swear to it.

Q. Now, then, do you know what was done at Leadville between Crittenden and Adair and Johnston and the former owners of the Smuggler 2?

A. Well, I was not there, but Acheson told me, and so did Dunscomb, that they gave Crittenden $700.00, and that the deed was not put on record, but I was not present, though.

Q. What was that $700 for?

—. For Crittenden's interest and Adair's, so I understood.

Q. But you understood this from the parties themselves, did you?

A. Yes; Dunscomb told me in the presence of Mr. Thomson and his partner, Sayer. Dr. Dunscomb said they paid Crittenden $700. Atcheson paid him.

Q. But they told you nothing about what was done with Johnston at that time?

Objected to as hearsay.

A. Adair told me that if Johnston had agreed they could
255 have sold the property for a large amount of money, but Johnston would not agree to it. He was wounded in the foot. He was stopping at the Windsor hotel.

Q. Did Mr. Atcheson tell you anything about the matter or anything about his settlement with Johnston?

A. No; he did not. I do not remember that he did. Atcheson came in here with money enough to pay the men off on the Smug-

gler 2. He did a little gambling or something or other and the only man that got a nickle was Patterson, and——

Q. Who did that?

A. Atcheson. And George Case and myself and the Laplander—well, we had to rely on Dr. Dunscomb, and he summoned me over to see him, and Mrs. Dunscomb and the Dr. went up to Leadville and we went into Thompson and Sayer's office, and that is where we got settled, as far as I know. I know I got my money and the other boys got theirs.

Q. How much did you get?

A. Got all that was coming to me.

Q. When was that?

A. Oh, it was way along just about Christmas—along there some time after Christmas.

Q. Had those bills been running and standing all this time?

A. Yes; ever since I went to work; never got a pair of boots.

Q. How many men were they working?

A. Four, and myself made five.

Q. And who was it paid you off, Dr. Dunscomb or Charlie Thompson?

—. Well, Dan. Sayer paid me, but it was done in Thompson & Sayer's office, though. I got—well, I do not remember the amount, but I got $100 and a note 10 days from date on the First National bank, and that was paid.

Q. How did the other men get their money?

A. Billie Wilson paid Scotty and paid another fellow on
256 the street one day—yes; that is right. You know where the Merchants' and Mechanic-' bank is? Well, he paid him there.

Q. Who was this man called the Laplander?

A. His name was—I do not remember.

Q. What nationality was he?

A. From the north part of Russia, on the Baltic; a Laplander.

Q. Who was Scotty?

A. His name was James Miccell, a Scotchman. He was from Pennsylvania. I remember him well.

Q. Had these men been working all the time with you?

A. They were working there for over three months and they did not give them a nickle. McPherson & Jacobs at one time refused to let us have grub, and he said, "Here, Millar, I'll tell you what I will do. I'll furnish the grub if you will hold the property." Of course there was no back track to me then and I said I would do it.

Q. Atcheson never paid you anything, did he?

A. Not a quarter of a dollar. All the money I got was from Dr. Dunscomb. I got a few dollars out of him.

Q. You got some out of Dan. Sayer?

A. That was afterwards. I am speaking about during the time I was at work. This was after I quit. I got it out of Dunscomb and Thompson and Sayer.

Q. How much money did Dunscomb pay on the property after you went there?

A. Well, what he owed McPherson & Jacobs and Billie Koch; could not figure it up. I got somewhere about $400; got all that was coming to me.

Q. How much did you get?

—. Four dollars per day and board from some time in the latter part of July up until the latter part of November. That was not before I went to Leadville.

257 Q. Was not?

A. Not before I went into Leadville.

Q. That represented your wages for how long?

A. The whole time I never got a nickel.

Q. What money did you receive from Dunscomb before?

A. $50.00 that was sent over by Billie Koch, and I owed him a bill and he got it.

Q. You did not get any wages from Dunscomb?

A. Only the $50.

Q. Did the Dr. ever pay out some money for the mine?

A. Oh, yes; he sent some money to Jacobs and McPherson to pay some men and they were paid. Tackle Charley; his books will show.

Q. Did you see Atcheson after he got back from Leadville—after he settled with Crittenden and Adair?

A. Yes; saw them here.

Q. Did you ever have any talk with Atcheson or Dunscomb or Seaver about Johnston's interest in the property after the location of the J. C. Johnston mine?

A. I talked with Dunscomb.

Q. What did he say about Johnston's interest?

A. If I am not mistaken I think Johnston had a half and he sold to Chatfield and Wilson, and Crittenden and Adair had the other half. That is the way I always thought it was.

Q. What did Dunscomb and Atcheson and Seaver say to you about Johnston's interest in the property?

A. Well, Dunscomb, to go through the whole story—Dunscomb was grub staker, and Atcheson, in what is known as the Smuggler 2. Well, they—that is Crittenden, Atcheson, and Johnston—located and called it the J. C. Johnston. Dunscomb, as near as I could understand, he and Atcheson bought out Crittenden. They got half and Johnston the other half. What was done with it

258 (Johnston's half) more than that I never heard; I don't know. I think Adair told me he sold it to Wilson and got a set of harness and an old wagon.

Q. Did you ever have a talk with Thompson and Sayer or with Chatfield about Johnston's interest in that property?

A. No more than this; whatever conversation I had with Thompson and Sayer was a mere matter of collecting wages.

Q. At the time that Mr. Sayer or Thompson and Sayer paid you wages in Leadville, do you know what interests they were claiming in the property at that time?

A. I do not know; it was divided up between Thompson and

Sayer and Dunscomb and Chatfield and Wilson and these men Seaver and Atcheson were not spoken of at all.

Q. Do you remember when the Fulton Mining Company came into existence?

A. At that time, the time I got there, Dunscomb asked me, he said: "I can have any office I want; what office would you take, Jim?" and I told him I would take president, and he said: "Why?" and I said: "That is the highest office of the company; every one is subordinate to you," and that was right after I went into Leadville. I remember that well enough.

Q. Do you know what deeds or conveyances the Fulton Mining Company took of the Johnston property in order to get all the title?

A. The first deed was signed by Crittenden and was not recorded; the next deed, I suppose, was recorded; I know Crittenden went out and acknowledged it right this side—I mean down from the Texas house, just about one block below there, in Leadville; he
259 signed it and acknowledged it before a notary public there.

Q. You were present?

A. I was standing right by.

Q. Who was it got the deed from him?

A. Mr. Thompson was the man that asked for it; who it was drawn for, I would not say.

Q. Do you know what Crittenden received for it?

A. He did not receive anything for it at that time; that I am dead sure of.

Q. Did Adair sign it, too?

A. No; he was not there; he was over here in Aspen. He was running the tunnel on the late acquisition.

Q. Who did Crittenden make his first deed to of the Johnston mine?

A. Atcheson.

Q. And a second deed to the Fulton Mining Company?

A. I think so.

Q. What was the reason of it?

A. Well, the first deed was not put on record, and Dunscomb told me, coming up on the cars from Buena Vista, that he was going to make a deal with his brother-in-law, and he said: "See here, Jim, you want to stand in on this and keep your mouth shut and don't tell any more than you know, and I am going to have my brother-in-law, Mr. Thompson stand in and going to have a deed and going to have a stock company of it," which they did, as near as I know; said I, "All right;" and the madam told me the same thing.

Q. That was Mrs. Dunscomb?

A. Yes, sir.

Q. What was to become of Atcheson's interest under his deed?

A. I cannot answer that; I understood since that that Atcheson brought suit or was going to or something else. That was after I was over here; that part I don't know anything about.

Q. When Atcheson came back from Leadville in August,
260 after having taken this deed from Crittenden and Adair, did you see anything of him?

A. Saw him up here playing poker.

Q. Was there anything said to you by him or by Dr. Dunscomb about the stakes and notices on the Johnston claim?

A. Yes; he told me—I was over there at the time—he told me not to remove the stakes. I was holding it for the Smuggler 2. He said Judge Pendery told him not to remove the stakes. It was all the same to me. I know we had a big argument. I held that the Smuggler 2 was a valid location, and they held it was not. Well, after going into Leadville, we learned from Mr. Thompson and Mr. Sayer that where you do not locate on mineral you might sink for 1,000 feet. No good; that shut me up.

Q. Now, you did not talk with Atcheson at any time and he said nothing to you at any time about Johnston's interest in the Smuggler 2 or the J. C. Johnston?

A. This Smuggler 2 he was one-quarter interested. It was Atcheson, Johnston, Dunscomb, and Seaver.

Q. How was it afterwards when Johnston claimed one-half of the new location?

A. They went to work and called it vacant ground.

Q. Who did?

A. Well, I suppose, Crittenden and Adair and Johnston. I do not know what others.

Q. Here is what I want to get at, Mr. Millar: Now, you do know after the location of the J. C. Johnston Atcheson went to the new locators and settled matters up and took a deed for a half interest in the Johnston. Now, what I want to know is whether Atcheson ever acknowledged to you or said to you anything about the
261 remaining interest of Johnston in that property—whether it was ¼ or ½.

A. No; not that I remember of; it might be, but I do not remember. Adair was the one that spoke to me about it.

Q. Did Johnston say anything?

A. He said he got a half and he traded to Chatfield and Wilson and said he got a harness and an old wagon. I don't remember of Adair saying anything about it. Joe told me if Johnston had agreed to it he would have made a deal after he came back from Leadville.

Q. Did Seaver say anything about Johnston's interest?

A. I never saw Seaver after that time he got his eye blowed out here.

Q. Now, you say at the time of the location of the J. C. Johnston there were bills for groceries, labor, &c.?

A. Yes, sir.

Q. When were these bills paid?

A. They were paid afterwards.

Q. How long afterwards?

A. Oh, some—let me see; McPherson did not get his bill until along in November. Scotty, the Laplander, Fisher, and George Case they got their money along—oh, just before I went over to Leadville.

Q. In the fall or winter?

A. Oh, the fall, way along after election—a few days after elec-

tion—Dr. Dunscomb, I think—I am not certain—I think he sent $500.00 over to Billie Koch and Billie paid as far as the money went and then gave time checks for the balance. We collected them afterwards. Dunscomb was the man that paid them.

Q. About what was the indebtedness of the mine at the time of the location of the J. C. Johnston in August, 1880?

A. Well, I could not answer that until I looked over the matter. I have an idea that it is —, but I am not certain.

262 Q. Was it anything like the $700 that was paid to Crittenden and Adair?

A. I think it was over that. I am not certain, though.

Q. About how many men were working at that time?

A. Oh, in the lower tunnel there were four, and then there were two men getting out lagging, and then two men working on the upper tunnel. That is where Mr. Johnston struck the mineral.

Q. How long had the bills been running for labor and supplies?

A. Had been running way along—June. That part can be proven right here in town.

Q. Where were you working before you went on the Smuggler?

A. Prospecting.

Q. Do you know the names of the men working on the Smuggler 2 during these months?

A. Some of them; George Case, the Laplander, he was there, too, and that is all that I remember now. I knew them all at the time, but have forgotten their names.

Q. Did Atcheson and Seaver have anything to do with the property at all after about the first of August, when this deal was made, and what did they have to do?

A. Atcheson and Dunscomb came up there and they made a deal with Crittenden and Adair, and all the time I was there it was understood they were owners.

Q. That was the last time anything was seen of Seaver on the property?

A. The last time Atcheson was in camp, I guess, if I remember right.

Q. How about Seaver?

A. Know the time he got his eye blasted? Well, he went back East, where he came from, and that is the last I saw of him.

263 Q. Do you remember what month?

A. I guess about October, along in the fall. Dustane got his horse up and sent him across the range. He sent for me and I went up to see him. His face was full of powder; his eye—one eye was shut and the other he could see just a little.

Q. Seaver was not in Aspen during all the time?

A. No; he was here during the time that Crittenden and Adair—and Atcheson and he were here for a couple of weeks. The time he hurt his eye; I remember that, and Capt. Thatcher would remember that, too.

A. I will ask you if you had anything to do with the deed from Crittenden and Adair to the Fulton Company?

A. Yes.

Q. What was it?

A. I did just what they told me to do.

Q. What was that?

A. Walk up the street and have him sign it, and Wilson—that is, Billie Wilson, the cattleman—he was there, too.

Q. What did he have to do with it?

A. Well, I suppose he was interested, but the way it came around was this: I, being acquainted with Crittenden, he was to sign it. Billie was there, and I think Mr. Thompson asked me to go up there. I met him close to the Texas house; I remember that well enough.

Q. Was Chatfield there?

A. No; he was not there. He was up, I think, in Thompson and Sayer's office. He was there a little bit before.

Q. Did you receive anything for your services in the matter?

A. No; didn't ask for anything.

Q. Did Crittenden or Adair say anything about their having made deed to Atcheson?

264 A. Not that I remember of. I think Mr. Dunscomb spoke about the previous deed to Atcheson was not recorded; that I know for a fact, but this deed was made out a little different from the first one.

Q. I will ask you whether the fact that their bills were unpaid for labor and supplies for the Smuggler 2 had anything to do with the location of the J. C. Johnston by Mr. Johnston.

A. Well, that is what Mr. Johnston told me and Crittenden and Adair—that they failed to put up and Johnston was getting tired of it. He was running the mine at the time, and the only way he could see out of the hole was to make a relocation and try and raise the money that way. Adair told me, and I think Johnston did, too.

Q. Was Johnston in debt at that time or was the mine in debt?

A. It was the mine.

Q. Was the mine in debt to Crittenden and Adair?

A. No; not that I know of; nothing that I know of.

Q. Did not Crittenden have some kind of a store here, and did not the mine purchase supplies there?

A. Well, Johnston might have been; that part I do not know.

Cross-examination by C. I. THOMPSON:

Q. Mr. Millar, you were employed by Mr. Johnston about the time the relocation was made of the J. C. Johnston claim?

A. About that time.

Q. How long after you were employed before Johnston and Crittenden and Adair went to Leadville?

A. It was not but a few days; only 5 or 6 days.

Q. Did not they go over, Mr. Millar, the next day after

265 they had the J. C. Johnston surveyed?

A. I know it was very shortly, but it was not the next

day; that I know. I was talking with Crittenden and Adair three days afterwards.

Q. But it was very shortly afterwards?

A. Yes; it was only a few days.

Q. Did you work in that ground before that time?

A. I went to work about the time Mr. Johnston got his foot hurt; that was about the time or right previous to it.

Q. I mean did you work before that time that you were employed. Did you ever work for Mr. Johnston on that ground?.

A. I think I did.

Q. When was it?

—. It was a few days; he had a racket and he was going over there to fight somebody and I went over there.

Q. Did you ever work before that time.

A. Mr. Johnston did not hire me.

Q. That is the first time you ever worked on that ground?

A. It was about the time of the location of the J. C. Johnston, a few days ahead of it. Crittenden and Adair were the men that hired me.

Q. Did you ever work on that claim before that time?

A. No.

Q. And you were hired by Crittenden and Adair?

A. Yes.

Q. Before Crittenden and Adair hired you were you acquainted with the claim?

A. Yes; well.

Q. Had you been through it?

A. Yes; when they first struck mineral I was through it, I and Joe Adair.

Q. Were you acquainted with it before they struck mineral?

A. I knew it was a location.

266 Q. Did you know it in any other way than by general reputation?

A. I heard Johnston and Crittenden talk about it.

Q. When they struck mineral was the first time you had examined it?

A. Yes, sir.

Q. Where were you working before you commenced working on the Johnston?

A. Prospecting.

Q. Were you prospecting in this immediate neighborhood?

A. Yes; right up on the mountain.

Q. Had you paid any particular attention to the Smuggler 2 claim or the Johnston claim before that time?

A. Went past there; that was all.

Q. Just walked past there?

A. Yes.

Q. Now, when Mr. Johnston and Crittenden and Adair went to Leadville they left you in charge of the mine?

A. Yes.

Q. And Atcheson came in shortly after?

A. Him and Dr. Dunscomb.

Q. Shortly after Crittenden and Adair went to Leadville?

A. About the same time—a few days afterward.

Q. Do you remember how many days afterward?

A. No; not now; very shortly.

Q. What time of the day did Dunscomb and Atcheson get in here?

A. Well; I do not know; they came up next day—next day, I think it was—along the latter part of the day—and inquired for me. Well, I and George Case were down to the tent, and I told Dunscomb, The way things were going on is ridiculous; we have not a nickel; not a dollar to go and get a sack of flour with, and he said, "That is all right; that is all right."

Q. Atcheson went to Leadville alone, didn't he, and the Dr. stayed here?

267 A. They both went together, if I remember rightly, but that I am not certain of.

Q. Anyhow, Atcheson went to Leadville?

A. Yes.

Q. How long after you left them that morning did Atcheson go to Leadville?

A. Only a few days; I am not certain; it was only a short time.

Q. When he went up and met you at the tent that morning was that the first time you had seen him since he came in?

A. Yes.

Q. Who told him that the Smuggler 2 had been relocated as the J. C. Johnston?

A. I do not know.

Q. Did you tell him?

A. No.

Q. Do you know whether he had found it out?

A. He could have found it out in town.

Q. Who told him that Johnston had gone to Leadville, do you know?

A. No; I do not.

Q. Did you tell him?

A. No; I did not; had no conversation with him previous to his coming up there.

Q. I mean at that time.

A. No, sir; the only talk was about getting some money.

Q. He had money at the time he met you?

A. Yes; but he did not exhibit it.

Q. Did he gamble it all afterwards?

A. I was so told. I did not see him, but some man told me.

Q. Did Atcheson tell you he had brought money to pay the men off?

A. He told me to make out time checks and go over to town and meet him up to McPherson's store. I went over to town and made out the time-roll for every nickel and found Mr. Atcheson playing cards in Sam. Garret's, so I said nothing to him.

268 Q. What did he say he had come over for when he met you?

A. To settle up business.

Q. That is what he had come for?

A. Yes.

Q. Do you know when he first found out that Johnston had relocated the Smuggler 2 as the J. C. Johnston?

A. Well, it was shortly after he relocated the J. C. Johnston and revoked the power of attorney that Atcheson had.

Q. Did he say anything about it at that time?

A. Atcheson claimed to me—I do not know whether it was right or not—that he could have made a sale in Kansas City.

Q. I asked what he said about Johnston's having jumped it.

A. He complained about it and said if Johnston had given him a little more time he would have made some money. I said, "How about these bills?" That is where I got my talk in, and he said, "You come over to town and bring over the books, accounts, and time books and get the money," or something equivalent.

Q. Did you continue to work there after that?

A. Yes.

Q. Under whose direction did you work?

A. Seaver's; he was out here and had charge awhile, and the next man was Dunscomb.

Q. Did Johnston come back from Leadville after he left Aspen?

A. Not at that time; about a year afterwards.

Q. Then you worked under Seaver and Dunscomb?

A. Yes.

Q. How much money did Dunscomb pay out over here before you went to Leadville; do you know?

A. Got $150, and McPherson and Jacobs put in their bill and got away with that, and the next was $500; I am not certain; but, however, I never got a nickel until I went to Leadville; got $20.00 from Wilson and the balance from Dan. Sayer.

269 Q. Did you get all that was coming to you?

A. Yes; it was all square.

Q. About this deed that went to the Fulton Mining Company. Do you know who drew it?

A. Dan. Sayer, I think, if I remember right.

Q. Did you see it drawn up?

A. I was sitting in the room. I did not pay any particular attention. I think it was Sayer.

Q. Who went to Crittenden to get him to sign it?

A. Wilson and myself. That I am positive of.

Q. Who conducted the negotiations with Crittenden and got him to sign it?

A. I did.

Q. Under whose orders?

—. Orders of Mr. Wilson, Sayer, and Thompson.

Q. Are you sure I had anything to say about it?

A. I think you are the man that said, "Get Millar and he will strike Crittenden."

Q. Did you hear me tell them to get Millar?

A. I would not swear to it. I know you were in the office when Dan. Sayer drew the business.

Q. What was done with the deed after Crittenden signed it?

A. I do not know.

Q. Who took the acknowledgment?

A. It was a notary public. I do not remember his name, but I can find out.

Q. How many days were you in Leadville at that time?

A. I was there over a month.

Q. What time did you come to Leadville at that time?

A. About the first of December.

Q. How long after you came there before that deed was drawn?

A. Not until quite awhile.

270 Q. A month after that?

—. Pretty close to it. I tell you just before the time of that racket about the liquor man he attempted to sell a title over here in Smuggler 1.

Q. Who did?

A. Crittenden. I remember the circumstance well enough, but dates I am not certain about.

Q. What racket did he get into about that?

A. He claimed to have an interest, and didn't have it. That's all; and if I and Jim Harrington had have been a little fuller he would have made it go, too, but I tumbled a little bit. We were the vouchers.

Q. Well, how many times were you in the office of Thompson and Sayer when you were in Leadville?

A. Pretty nearly every day.

Q. What were you working at up there?

A. The time I was in the office—not doing anything.

Q. Do you remember how many rooms there were in that office?

A. Two that I know of; one was a sitting-room and one was a law office; there might have been more, though; I do not know; right behind the First National bank. I hav-n't been there since 1881. I and Bob Bates and Adair was playing billards in the Clarendon hotel on New Year's day. I did not come back here until after that.

Q. Did you ever work on the claim after that?

A. No; Bob Bates and Joe Adair made the survey.

271 Redirect examination by C. S. WILSON, Esq.:

Q. Can you tell, Mr. Millar, when the mineral was struck on Smuggler 2?

A. It was in the early part of the summer. Along in July, I think, Mr. Johnston struck it.

Q. How long before you saw it had that mineral been found; do you know?

A. A couple of days. Just like any strike in the camp, we could go in and look at it. Oh, it might have been two or it might have been three days. I am not certain; it was very shortly.

Q. You say you made out the time checks, giving the time and amount, and Atcheson was to meet you at McPherson's and pay the bills?

A. That is so.

Q. Was that before he had gone out to Leadville or come back?

A. It was before he went out. He told me to bring over the time books and bills and go around and collect them, and I supposed he was going to settle, and when I found him he was playing cards.

Q. Then he played this poker game before he went out to Leadville and lost his money then?

A. Yes; no; before he came in.

Q. How is that?

A. Him and Dr. Dunscomb came in together, and that was the time they come up to the tent and spoke to me. Atcheson came in here and then went out onto the hill and then came back, and then went out and never came back.

Q. Now, I want to know when it was that he played the cards and lost the money; whether it was when he first came in or when he came back.

A. After he got back.

Q. And that was the time after he came back that he was
272 going to meet you and settle up?

A. Yes; Dunscomb said to me afterwards when I saw him in Buena Vista, "I understood you went over there for a fighting man;" and I said, "Not much, Dr.;" and he said, "That is what I was told;" and I said it was not the case.

Q. Now, you say McPherson got $150?

A. Yes; he held it all out. Dr. Dunscomb sent over a draft at that time, and we had not boots or any clothes at that time.

Q. What did McPherson hold it out for?

A. Groceries; beef 40c. a pound and a can of tomatoes, $1.00, and so on.

Q. What was done with the $500 that came in afterwards?

A. George Case, the Laplander, Fisher, and the two fellows making lagging, they got that, and the Dr. thanked me afterwards for not holding any of that out.

Q. That did not pay all the bills?

A. Not altogether, but squared it up this way with time checks.

Q. It bolstered up the credit?

A. Yes; bolstered up the credit.

Q. Do you know where the surveyor Ellithorp is now?

A. No.

Q. Do you know where Crittenden is?

A. I heard he was in the penitentiary; that's only hearsay. He got into some racket back East.

Q. Where is Adair?

A. Adair is dead; got his leg broken and died.

Q. When was it?

A. Four years ago.

Q. Did Chatfield have anything to do with this mine while you were working there?

A. No; he would not recognize me. I struck him for a little money and he would not recognize me. He said, You are
273 a Smuggler 2 man; I do not recognize you. He and Billie Wilson came over there together. All the money I ever got was from Dr. Dunscomb.

Q. When did this claim cease to be worked as Smuggler 2 and commence to be worked as the J. C. Johnston?

A. That was about the last of July or the first of August. I have forgotten, but I can find out mighty quick.

Q. This pay-roll you made out—where was it left?

A. I kept it in my pocket.

Q. What has become of it? Do you know?

A. The time books I gave to Dr. Dunscomb, Thompson, and Sayer, and the pay-roll at that time I had it in my pocket; since then I lost it.

(Complainant calls for the production of the time books and other papers mentioned by witness as having been turned over to Dr. Dunscomb.)

Q. How far back did that time book extend?

A. During the time I first went to work on Smuggler 2.

Q. It was the original time book that Johnston kept?

A. No; I got it from McPherson. It was along towards the middle of the month—the latter part of the month. I remember that well enough.

JAMES MILLAR.

I, Charles S. Wilson, of the city of Aspen, county of Pitkin and State of Colorado, a notary public in and for said county and State aforesaid and duly appointed by the annexed stipulation to take the deposition of the said James Millar, the witness, whose name is subscribed to the foregoing deposition, *and* certify that before the commencement of his examination as witness in said cause
274 between the said J. C. Johnston, the complainant, and the said The Standard Mining Company of Kansas City, one of the defendants, he, the said James Millar, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties, so far as he, the said James Millar, should be interrogated concerning the same.

That the said deposition was taken at the office of the Percy Consolidated Mining Company, in Aspen, Pitkin county, Colorado, on the 2rd day of August, A. D. 1888, and after the said deposition was taken by me as aforesaid the interrogatories and cross-interrogatories and the answers thereto as written down were read over to the said James Millar, and that thereupon the said deposition was signed and sworn to by the said James Millar before me at the place and on the day last aforesaid.

[SEAL.] CHARLES WILSON,
Notary Public.

Stipulation.

It is hereby stipulated and agreed by and between the complainant and the defendant The Standard Mining Company of Kansas City in the above cause that the foregoing deposition may be read and used in evidence in said cause without objection, except as to the objections made and noted in said deposition.

C. S. WILSON, *For Complainant.*
CHARLES I. THOMSON,
For the Standard Min. Co. of Kansas City.

275 Fees for cost of short-hand work and transcribing the foregoing testimony, 69 folios $13 80

Rec'd payment of complainant.

C. S. WILSON,
Notary Public.

(Indorsed:) No. 2244. Circuit court of the United States. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.*, def't. Deposition of James Millar on behalf of complain't. Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

And the deposition of Louis Johnson on behalf of complainant is in words and figures as follows, to wit:

Deposition Louis Johnson Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States, Sitting at Denver.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants. } No. 2245.

276 Deposition of the witness Louis Johnson, produced, sworn, and examined the seventh day of August, A. D. 1888, at the city of Aspen, county of Pitkin and State of Colorado, under and by virtue of the verbal stipulation made and entered into between C. S. Wilson, Esq., of counsel for complainant, and C. I. Thomson, Esq., counsel for the defendant The Standard Mining Company of Kansas City, in a cause pending in the circuit court of the United States for the district of Colorado, sitting at Denver, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City and others are defendants.

LOUIS JOHNSON, of the county of Lake, in the State of Colorado, a witness produced on the part of the complainant in rebuttal, being

by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, deposeth as follows:

Direct examination by C. S. WILSON, Esq.:

Q. Please state your name, age, residence, and occupation.

A. I am living in Aspen; have been since 1879 most of the time, except for a few months when I was in San Juan; I have been mining and prospecting; I am thirty-four years old.

Q. Do you know the plaintiff in this suit, J. C. Johnston?

A. Yes, sir.

Q. Were you in Aspen in 1880?

A. Yes.

Q. Were you acquainted with the premises known as the Smuggler 2 mining claim?

A. I was up there once; looked at the tunnel, but I did not go in.

Q. You remember the claim, do you?

A. Yes.

277 Q. And did you also know the J. C. Johnston mining claim, so called?

A. No, I do not think I was there after it was relocated.

Q. Did you know Mr. J. C. Acheson, who was an owner in the Smuggler 2?

A. I knew Acheson; I do not know his initials, but I knew Acheson.

Q. He was owner or claimant in the Smuggler, was he?

A. Yes, he claimed to be an owner in the Smuggler 2.

Q. And did you know Doctor Dunscomb, one of the owners?

A. Dunscomb; I knew him, too.

Q. Did you know James E. Seaver?

A. No, I did not know Seaver; I do not think I ever saw him. I might have seen him but never got acquainted with him.

Q. Did you at any time during the summer of 1880 see Mr. Acheson or Dr. Dunscomb in Aspen?

A. Yes, I saw him here for about eight or ten days; it might have been a week and it might have been ten days.

Q. Can you tell about when that was?

A. It was summer, about July or August; I do not recollect the date; the last of July or the 1st of August; in the summer anyway.

Q. I will ask you whether, at that time, you had occasion to know whether Mr. Acheson had any considerable amount of money with him.

A. Yes, I knew he had lots of money with him—that is, considerable.

Q. Do you know what he did with it?

A. I think he lost it playing cards, playing poker; in fact, I know he did.

Q. Did you yourself have anything to do with that game?

A. Yes, I was playing in the game.

278 Q. Playing with Acheson?

A. Yes; and Dunscomb, Sam. Garrett, and Jim Richardson.

Q. Now, how much money did Acheson have with him?

A. I do not know; we was playing in a game one night; that is the first night I knew him; met him in the afternoon, I think it was; him and Sam. Garrett got to talking about money; Sam. Garrett made the remark that he had more money than Acheson, and Acheson went down in his pocket and pulled out a great big roll of money; I do not know how much it was, but I know he lost five or six hundred dollars in the deal—that is, altogether.

Q. Did he lose all he had?

A. I do not know whether he did or not. He borrowed $90.00 of me in the game the last time I played with him. When he went away he said he didn't have any money, but he would send it to me or would pay me the next time he came in.

Q. Do you know where he went?

A. No; I do not know where he went; I haven't seen him since.

Q. Do you know where he came from when he came here?

A. I heard he came from Kansas City; that is all I know.

Q. And how long was he in town at that time?

A. Well, a week or ten days, as near as I can remember.

Q. Was that his first visit to Aspen, do you know?

A. Yes; the first I ever saw.

Q. Do you know whether he was here before that time?

A. I do not think he had been here before.

Q. Do you know what he or Doctor Dunscomb did at that time with reference to the paying of any debts of the mine either for labor or for supplies?

279 A. Well, I do not know anything about that, whether they paid off anything or not. I heard the men around here kicking about not getting their pay.

Mr. THOMSON: You need not state what you heard the men say.

WITNESS: No; I do not know anything about whether he paid anything.

Q. When did you hear that; was it after he had gone?

Mr. THOMSON: Hear what?

Mr. WILSON: Heard the men kicking.

Mr. THOMSON: I object to the question; the answer necessarily would be hearsay.

Q. When was it that you heard the men kicking about not getting their pay; was it after he had gone or while he was here or before?

A. Oh, a long time after.

Q. After he had gone?

A. Yes—that is, in 1884 I saw a man by the name of George Case that was a kind of foreman afterwards, and he told me he never got any pay—they cheated him out of his pay.

Q. When was Case working there, if you know?

A. He was working there in the summer.

Q. Some time in 1880?

A. Yes, sir.

Q. Do you know long he worked?

A. No; I do not know how long he worked.

Q. Do you know any of the other men that worked on the mine?

A. Not except Dustin; whether he worked there or not, I do not know; I could not say.

And further witness saith not.

LOUIS JOHNSON.

280 Subscribed and sworn to before me this 8th day of August, A. D. 1888.

[SEAL.] JAMES B. KNOBLOCK,
Notary Public.

My commission expires June 22d, 1892.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, James B. Knoblock, a notary public in and for said county, in the State aforesaid, do hereby certify that the witness, Louis Johnson, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said deposition was taken by me at the office of the Percy Consolidated Mining Company, in the town of Aspen, State of Colorado, at the hour of four o'clock p. m., August 7th, A. D. 1888, pursuant to stipulation and agreement of counsel aforesaid; that said deposition was so taken by me in short-hand writing upon oral interrogatories propounded to said witness by said counsel as aforesaid, and after said testimony was by me so taken and transcribed, as hereinbefore appears, the same was read over by said witness and, having been corrected by him, was subscribed to before me and in my presence.

I do further certify that I am neither of counsel nor kin to any of the parties to the above-entitled action and have no interest whatever in the result of said suit.

[SEAL.] In witness whereof I have hereunto subscribed my name and affixed my seal this 8th day of August, A. D.
281 1888.

JAMES B. KNOBLOCK,
Notary Public.

The above and foregoing certificates of the notary public truly and correctly set forth the stipulation of counsel and we hereby waive all formalities in the taking of said deposition as to the manner and time of the taking thereof.

CHARLES S. WILSON,
Attorney for Plaintiff.
CHARLES I. THOMSON,
Attorney for Defendant The Standard Mining Company of Kansas City.

To transcribing 18 folios of testimony at 20 cents per folio	$3 60
To taking same in short-hand and all services as notary public and postage	1 00
Total	4 60

Received payment of the plaintiff.

JAMES B. KNOBLOCK.

(Indorsed:) No. 2244. U. S. circuit court. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Deposition of Louis Johnson for complainant. Opened, published, and filed Aug. 31, 1888. William A. Willard, clerk.

282 And afterwards and on, to wit, the 5th day of September, A. D. 1888, there was opened, published, and filed in said court and in said cause the deposition of Charles R. Kelly on behalf of complainant, and the said deposition is in words and figures as follows, to wit:

Deposition Charles R. Kelly Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States within and for said District.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF *of* KANSAS CITY *et al.*, Defendants.

Interrogatories to be propounded to Charles R. Kelly, a witness for the complainant, John C. Johnston.

Interrogatory first. What is your name, age, residence, and occupation?

Interrogatory second. Do you know the complainant in this cause, John C. Johnston?

Interrogatory third. Were you ever in Pitkin county, Colorado?

283 Interrogatory fourth. Were you acquainted with the premises known as the Smuggler 2 mining claim and the J. C. Johnston mining claim, at or near Aspen, Pitkin county, Colorado?

Interrogatory fifth. Did you ever work upon said claims or either of them? If so, for whom, at what time, and how long?

Interrogatory sixth. If you worked on the said Smuggler 2 claim, what wages did you receive and who paid them?

Interrogatory seventh. Do you know anything about the in-indebtedness of the mine during the time that you worked there?

Interrogatory eighth. What, if you know, was the indebtedness for wages and supplies at the time of the location of the J. C. Johnston mining claim?

Interrogatory ninth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters

in question in this cause? If yea, set forth the same fully and at large in your answer.

——— ———,
Attorney for John C. Johnston.

284 *Cross-Interrogatories to be Propounded to said Witness.*

I.

When did you commence work on the Smuggler 2 claim?

II.

Did you ever work on the J. C. Johnston claim? If so, when, how long, and for whom?

III.

When did you quit work on the Smuggler 2 claim?

IV.

Did you work continuously on the Smuggler 2 claim from the time you commenced until you quit?

V.

How do you know the amount of the indebtedness of the mine at the time of the location of the J. C. Johnston mining claim?

CHARLES I. THOMSON,
For the Standard Mining Co.

Stipulation.

It is hereby stipulated and agreed by and between the complainant and defendant, The Standard Mining Company of Kansas City, in the above-entitled cause, through their respective solicitors, that the deposition of Charles R. Kelly, of Keokuk, Iowa, may be taken upon the foregoing interrogatories and cross-interrogatories before any notary public or other officer authorized to administer oaths at Keokuk, Iowa, at such time and place as may be appointed by said officer, and that said deposition so taken may be read or used in evidence in said cause without objection to any matter of
285 substance or form relating to the taking of such deposition.

C. S. WILSON,
For Complainant.
CHARLES I. THOMSON,
For the Standard Min. Co. of Kansas City.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for said District.

J. C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants.

Deposition of Charles R. Kelley, in the city of Keokuk, county of Lee, State of Iowa, a witness of lawful age, produced, sworn, and examined upon his oath on the 23rd day of August, A. D. 1888, at the office of J. F. & N. M. Smith, by me, Nannie M. Smith, a notary public, in pursuance of the annexed stipulation between parties in the above-entitled cause for the examination of the said Charles R. Kelley.

The said CHARLES R. KELLEY, being first duly sworn by me as a witness in the said cause before the commencement of his examination to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties so far as he should be interrogated, testified as follows:

Interrogatory 1st. What is your name, age, residence, and occupation?

Answer. My name is Charles R. Kelley; age, 34; resi-
286 dence, No. 1114 Johnson street, Keokuk, Iowa, and my occupation is grocery keeper.

Int. 2nd. Do you know the complainant in this cause, John C. Johnston?

Ans. Yes; I am acquainted with him.

Int. 3rd. Were you ever in Pitkin county, Colorado?

Ans. Yes.

Int. 4th. Were you acquainted with the premises known as the Smuggler 2 mining claim and the J. C. Johnston mining claim at or near Aspen, Pitkin county, Colorado?

Ans. Yes.

Int. 5th. Did you ever work upon said claims or either of them; if so, for whom, at what time, and how long?

Ans. I worked on Smuggler 2 for J. C. Johnson; commenced work on the second Tuesday in July, in 1879, and quit the 6th of August following, I think. I did not work any on the J. C. Johnson claim.

Int. 6th. If you worked on the said Smuggler 2 claim what wages did you receive and who paid them?

Ans. I received $2.50 a day, and was paid by either J. C. Johnson or George Crittendon. They were together, and I do not remember which one handed me the money.

Int. 7. Do you know anything about the indebtedness of the mine during the time that you worked there?

Ans. No; I do not.

Int. 8th. What, if you know, was the indebtedness for wages and supplies at the time of the location of the J. C. Johnston mining claim?

Ans. I do not know.

287 Int. 9th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. No.

Cross-Interrogatories Propounded to said Witness.

Int. 1st. When did you commence work on the Smuggler 2 claim?

Ans. The second Tuesday in July, in 1879.

Int. 2. Did you ever work on the J. C. Johnson claim; if so, when, how long, and for whom?

Ans. I did not work on it.

Int. 3rd. When did you quit work on the Smuggler 2 claim?

Ans. On August 6th following the time I commenced.

Int. 4th. Did you work continuously on the Smuggler 2 claim from the time you commenced until you quit?

Ans. I did.

Int. 5th. How did you know the amount of indebtedness of the mine at the time of the location of the J. C. Johnston mining claim?

Ans. I did not know it.

CHARLES R. KELLEY.

Subscribed and sworn to before me this 24th day of August, 1888.

NANNIE M. SMITH,

[SEAL.] *Notary Public.*

288 I, Nannie M. Smith, of the city of Keokuk, county of Lee and State of Iowa, a notary public in and for said county, in the State aforesaid, and duly appointed by the annexed stipulation to take the deposition of the said Charles R. Kelley, the witness whose name is subscribed to the foregoing deposition, do certify that before the commencement of his examination as witness in said cause between the said J. C. Johnston as complainant and the said The Standard Mining Company of Kansas City, one of the defendants, he, the said Charles R. Kelley, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties so far as the said Charles R. Kelley should be interrogated concerning the same.

That the said deposition was taken at the office of J. F. & N. M. Smith, in Keokuk, Lee county, Iowa, on the 24th day of August, A. D. 1888, and after the same was taken by me as aforesaid, the inter-

rogatories and cross-interrogatortes and the answers thereto as written down were read over to the said Charles R. Kelley, and that thereupon the said deposition was signed and sworn to by the said Charles R. Kelley before me at the place and on the day last aforesaid.

NANNIE M. SMITH,
Notary Public.

[SEAL.]

(Endorsed:) No. 2244. Circuit court U. S. John C. Johnston *vs.* The Standard Mining Co. *et al.* Deposition of Chas. R. Kelly for complainant. Opened, published, & filed Sep. 5, 1888. William A. Willard, clerk.

289 And afterwards and on, to wit, the 3rd day of November, A. D. 1888, came again the said defendants, by their solicitors aforesaid, and filed in said court and in said cause a certain stipulation as to evidence, and the said stipulation is in words and figures as follows, to wit:

Stipulation. Bill to be Read as Evidence.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States in and for said District.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY and Others,
Defendants.

It is hereby agreed between the above-named parties by their attorneys that the within copy of the bill of complaint in the case of John C. Johnston *vs.* Isaac W. Chatfield *et al.*, in the circuit court of the United States for the district of Colorado, may be read in evidence by either party at the hearing of the above-entitled cause, or either of said parties may at said hearing read so much or such parts thereof as such party may deem expedient.

July 12, 1888.

C. S. WILSON,
Of Sol'rs for Complainant.
CHAS. I. THOMSON,
Solicitor for the Standard Min. Co. of Kansas City.

290 UNITED STATES OF AMERICA, }
District of Colorado, Eighth Circuit. }

In the Circuit Court of the United States in and for the State and District aforesaid, in Chancery Sitting.

JOHN C. JOHNSTON, Complainant,
vs.
ISAAC W. CHATFIELD, EDWARD DUNSCOMB, WILLIAM J. WILSON, Daniel Sayer, Charles I. Thompson, Edward F. Brown, J. C. Acheson, James E. Seaver, Howard W. Holden, William C. Auburn, George W. Crittenden, Margaret Dunscombe, Elizabeth H. Acheson, Belle R. Seaver, and The Fulton Mining Company, a Corporation, Defendants.

To the honorable the judges of the circuit court of the United States for the district of Colorado, in chancery sitting:

Humbly complaining unto your honors, your orator, John C. Johnston, a citizen of the said State of Colorado, brings this his bill against the above-named defendants and each and every of them, and thereupon your orator alleges and says:

I.

That the subject-matter of the cause of action herein exceeds in value the sum of ($500) five hundred dollars, exclusive of costs.

291 II.

That the cause of action arises and thereupon this suit is brought between a citizen of the State of Colorado and citizens of other States of the said United States as will hereinafter appear.

III.

That the defendants, Isaac W. Chatfield, Edward Dunscombe, William J. Wilson, Daniel Sayre, Charles I. Thompson, William C. Auburn, and Margaret Dunscombe, who is the wife of the said Edward Dunscombe, are residents and citizens of the State of Colorado; that J. C. Acheson and Elizabeth H. Acheson, his wife, are residents and citizens of the State of Illinois; that Howard W. Holden, James E. Seaver, and Bella R. Seaver, his wife, are citizens of the State of Missouri, as your orator is informed and believes; that George W. Crittenden is a citizen of the State of Missouri, as your orator is informed and believes, and Edward F. Brown is a resident of Santa Fé and a citizen of the Territory of New Mexico, and that the said The Fulton Mining Company is a citizen of the State of Colorado incorporated by the name aforesaid by the said State with its principal place of business therein appointed in its certificate of incorporation as at the city of Leadville, in the county of Lake, in said State.

IV.

That the said certificate of incorporation was filed in the office of the secretary of state of Colorado on the eleventh day of December,

A. D. 1880; that the said Edward Dunscombe, Isaac W. Chatfield, William J. Wilson, Daniel Sayer, and Charles I. Thompson were then and there stated to be the sole incorporators and directors of said company; that the capital stock thereof was fixed at one
292 million —, or one hundred thousand shares at ten dollars per valuation and non-assessable, as by reference to the records of the said office will more fully appear.

V.

And your orator further alleges that some time in the month of March, A. D. 1880, he was and for a long time prior had been engaged in practical mining and prospecting, and through constant exposure, hardship, and labor had acquired great experience in the same; that the defendants Dunscombe, Acheson, and Seaver, about the said time had entered into certain grub-stake agreements and other covenants with your orator by and under which he was to receive certain provisions, monies, and a certain interest in any lode or vein discovered by him, and in consideration thereof he, complainant, was to do certain prospecting and mining in and about the public domain of the said United States; that in said month of March your orator accordingly went into the Roaring Fork mining district, then in the county of Gunnison, now Pitkin, in said State, and being a part of the said public mineral domain, free and open to exploration, location, and purchase, unclaimed and unoccupied, and began to carry out his said contract, and among other matters and things then and there by your orator done was the discovery and occupation on the fifteenth of April, A. D. 1880, of a certain mining lode, ledge, and premises as a proposed mining claim, commonly called and known as "Smuggler Two"—that is to say, your orator and other persons had discovered certain float of an encouraging character, and were working in a drift formation with fair indications, and they determined to occupy and take a claim there, and for that purpose began to sink a discovery shaft upon
293 said premises in the center thereof and continued to sink said shaft until they reached the depth of ten feet and more; that they put up a plain sign or notice thereon and marked and designated the surface boundaries of said claim by erecting a good, substantial post or stake at each corner and center of the side lines thereof, firmly set in the ground and hewed on the sides in towards said pretended claim, and then and there your orator, according to said agreements with said defendants, executed and caused to be done in and about said projected claim all such things as in that behalf were required by law to have and to hold that said claim, and further made and executed by and with the defendants Margaret Dunscombe and Bella R. Seaver the location certificate thereof, and the same was thereupon filed and recorded in the office of the clerk and recorder in and for the county of Gunnison aforesaid, and the said Margaret and Bella acted therein as locators aforesaid without having ever been near the said claim or premises, but at the instance and in behalf of their respective

husbands, defendants herein as aforesaid, and your orator begs leave to refer to a certified copy of the said location certificate of the said "Smuggler Two" claim, hereto annexed and marked "Exhibit B," for greater certainty, and your orator prays leave that the same be made part and parcel of this his bill of complaint.

VI.

And your orator, further complaining unto your honors, alleges that it was upon his experience, knowledge, and industry in the matter of mining that the said parties, Duncombe, Acheson, and Seaver, relied, as your orator is informed and believes, in the matter of the mining enterprise in which they and your orator had
294 so as aforesaid entered upon, and your orator charges and avers that neither of the said pretended locators of the said "Smuggler Two" knew anything about the said locations or alleged discovery, and that your orator was the only one of the said locators whose names are signed to the said certificate who was on the ground and doing the work thereon, and at the time the said certificate was recorded the work on said "Smuggler Two" claim was in the gravel and drift formation and no mineral nor rock in place bearing gold and silver had been struck, and your orator further charges that at no time thereafter and prior to the discovery and location of the "J. C. Johnston" mining claim was any mineral or rock in place bearing mineral nor any well-defined or other vein found or uncovered, or anything discovered as would entitle the said locators to hold the said claim as "Smuggler Two" under the mining laws and regulations of the said State and United States aforesaid.

VII.

And your orator further alleges that thereafter the said Dunscombe, Acheson, and Seaver refused and neglected to comply with the covenants and agreements so as aforesaid made and concluded with them, and leaving your orator at work in the said Roaring Fork mining district with a promise to return within a certain time, and failing so to do, and for other good and sufficient reasons, your orator continued said work on said claim, and upon striking mineral therein and upon discovering rock in place bearing gold and silver and uncovering a well-defined vein in the discovery shaft theretofore sunk on said premises in the center thereof your orator located the same as the "J. C. Johnston" lode, ledge, vein, and mining claim, and thereupon had the same surveyed according
295 to law, and the location certificate thereof recorded in the office of the clerk and recorder in and for the county of Gunnison, now Pitkin county, and in all respects fully complied with the laws, rules, and mining regulations in such case made and provided.

VIII.

That the said location certificate was duly executed by your orator and one Joseph W. Adair, now deceased, and one George A.

Crittenden, defendant herein; that the above-named locators and discovered, having uncovered the said lode, ledge, and vein bearing mineral, on or about the fourth day of August, A. D. 1880, posted at the point of said discovery a plain sign or notice containing the name of the said lode, to wit, the "J. C. Johnston" lode, the name of the said discoverers above given, the date of said location, and the date of the said discovery; that thereafter they, the said locators, marked and defined the surface boundaries of said lode and vein mining claim by then and there erecting at each corner and at the center of each side line thereof a good substantial post or monument, firmly set in the ground, hewed and marked on the sides in towards said lode and vein mining claim; that afterwards, to wit, within (3) three months after the discovery of the said mineral in said lode, ledge, vein, or deposit as aforesaid, they, the said parties, discoverers aforesaid, made and executed a certain certificate of location as in that behalf required by law, and caused the same to be duly recorded in the office of the clerk and recorder in and for the county of Gunnison aforesaid, which said certificate of location contained the name of the said lode and mining claim, to wit, the "J. C. Johnston" lode, the names of the locators thereof, the
296 date of location, the number of linear feet claimed on each side of the center of the discovery shaft on said lode or vein, and the general course of said lode or vein as near as might be, also a description thereof by metes and bounds, and for greater certainty herein your orator begs leave to refer to a copy of the said certificate of location recorded as aforesaid on the 21st day of September, A. D. 1880, in Book Z, page 317, of the records of Gunnison county aforesaid, hereto annexed and marked Exhibit "A."

IX.

And your orator further shows unto your honors that the said J. C. Johnston lode, vein, and mining claim and the premises aforesaid for a certain interest in which your orator has brought this his bill of complaint is fully and particularly described as follows, to wit: The J. C. Johnston lode, vein, and mining claim situate in Roaring Forks mining district, in Gunnison, now Pitkin county, Colorado, measuring and containing (1,500) fifteen hundred linear feet, horizontal measurement, along said J. C. Johnston lode, vein, ledge, or deposit, and (150) one hundred and fifty feet on each side of the middle of said vein on the surface ground within the lines of said claim, (200) two hundred feet running S. 44° 30′ E. from center of discovery shaft and (1,300) thirteen hundred feet running N. 44° 30′ E. from center of discovery shaft within the side lines of said claim and butting and bounding as follows, to wit: Beginning at corner No. 1, southwest corner post of claim, thence north 44° 30′ east at (750) seven hundred and fifty feet to a post, corner No. 2, west center side-line post of claim, and continued course (1,500) fifteen hundred feet to corner No. 3, northwest-corner post of claim; whence it bears on a ledge of rocks on Mount Maggie north
297 18° 45′ west; whence peak on *on* Maroon range bears south 67° 10′ west; thence south 45° 30′ east (300) three hundred

feet to post No. 4, northeast-corner post of claim; whence peak on Mount Sopris bears north 77° west; whence cliff on Aspen mountain bears south 67° 45′ west; thence south 44° 30′ west (750) seven hundred and fifty feet to a post No. 5, east center side line of claim, and continues course in all (1,500) fifteen hundred feet to post No. 6, southeast-corner post of claim; thence north 45° 30′ west (300) three hundred feet to post No. 1, the place of beginning, and the discovery shaft of said claim is situated within its side lines as aforesaid and on the northwest slope of Johnston mountain.

And your orator avers that he was the original discoverer and locator of said J. C. Johnston mining claim; that the location of the said "Smuggler Two" on said premises was of no avail, force, or effect, because no mineral had been struck nor vein uncovered as aforesaid; that as soon as said mineral was found he located the J. C. Johnston claim therein and the said parties, Dunscombe, Acheson, and Seaver as aforesaid, having as aforesaid failed to comply with their contract with him and leaving him in debt without means, he sold then and there to the said George W. Adair a one undivided fourth interest and to the said George A. Crittenden a like one undivided fourth interest therein and retained a one undivided half interest in said claim and had the names of the said Adair and Crittenden put in and upon the said location certificate jointly with his own; and your orator shows, as will more fully hereinafter appear, that he afterwards sold a one undivided fourth interest therein to the said Isaac W. Chatfield and William J. Wilson, and that without this he has not sold nor parted with in good faith and for
298 good and valuable consideration any other or further interest or part or parcel in said the J. C. Johnston lode, vein, and mining claim, and is now and has always been entitled as of his own desmesne in fee at law and in equity to the remaining one undivided fourth interest of, in, and to the said premises, the J. C. Johnston lode aforesaid, unless it should herein appear to your honor that he was bound in equity to make over to any other party a one undivided eighth interest herein, as may thereinafter more particularly appear, and in said case, which your orator denies, your orator charges that he is entitled to a one undivided eighth interest of, in, and to the said J. C. Johnston lode and mining claim, and to recover the said one undivided fourth interest or the said one undivided eighth interest as may best accord with justice and equity your orator has brought this his bill of complaint.

X.

And your orator further shows that, as will hereinafter more minutely appear, as soon as the said Dunscombe, Acheson, and Seaver learned of the location of the said J. C. Johnston lode and mining claim they sent the said J. C. Acheson, with sufficient power of attorney to act for them, and bought out the interest of the said Adair and Crittenden in the said J. C. Johnston lode as aforesaid; that the said location certificate thereof was recorded on the fourth day of August, A. D. 1880, and the deed of conveyance

in this behalf from the said Adair and Crittenden to the said J. C. Acheson was dated August 10, A. D. 1880; that your orator is informed and believes and so charges the fact to be that the said parties, Dunscombe, Acheson, and Seaver, then and there well knew
299 that the said location was on the premises of the said "Smuggler Two," and that the same the "J. C. Johnston lode" was a good *a* valid location and claim, and your orator further avers that the said deed of conveyance to J. C. Acheson of date August 10, A. D. 1880, was not recorded, and that thereafter, with the full knowledge and consent of the said Acheson, Dunscombe, and Seaver, another deed of conveyance was made, executed, and delivered to the defendant The Fulton Mining Company on the ninth day of December, A. D. 1880, and that, notwithstanding said deed, the said J. C. Acheson made other and later conveyances of his interest, if any, in the said the J. C. Johnston lode.

That thereafter and on the twelfth day of October, A. D. 1880, prior to the said deed to the Fulton Mining Company aforesaid, and while, as your orator is informed and believes, the said parties defendants herein were contemplating and engaging in the formation of the said "The Fulton Mining Company," the said Chatfield and Wilson purchased, as hereinafter fully set forth, one undivided fourth—that is to say, the undivided half of the one undivided half then held in said claim by your orator, and a part of the purchase price, to wit, (1,200) twelve hundred dollars, was to be paid in a certain team and wagon valued at ($350) three hundred and fifty dollars, which was to be delivered at Leadville, and upon your orator's going there for that purpose the said Chatfield, by false and fraudulent representations, to wit, that your orator had no right to locate the said J. C. Johnston on the premises of Smuggler Two aforesaid, that the parties, grantees of Bella R. Seaver and Margaret Dunscombe aforesaid, intended to fight the matter in the courts and adverse the claim for a patent; that your orator's title therefore was in dispute, and that tedious and expensive legal proceedings would
ensue before the J. C. Johnston claim could be settled and
300 the title perfected, and that your — would have to employ lawyers to this end, and other like statements, which the said Chatfield then and there knew to be false and used to deceive and defraud your orator in his ignorance of the facts and law, and which your orator was induced to believe from the great confidence he then placed in the said Chatfield and in the defendants Thompson and Sayre, who then and there knew and understood the whole matter, and thereby your orator was induced to enter into a contract with the said Chatfield that if such proceedings were pending in good faith and such services of lawyers were necessary he would be prepared to give up a one-eighth interest—that is to say, one-half of his remaining quarter interest—to help pay and to pay in full the expenses of such a lawsuit, and thereupon the said Chatfield, having in this way fraudulently induced your orator to conditionally part with one undivided eighth interest, sought to obtain the remaining eighth, and thus secure all of your orator's interest in

the lode which your orator had discovered, located, and labored during a hard winter and spring to develope and make valuable.

XI.

And your orator further shows that in pursuance of this scheme the said Chatfield then and there informed your orator that he, the said Chatfield, Thompson, Sayre, Dunscombe, the brother-in-law of the said Thompson, and Wilson, defendants herein, intended to form a company and an incorporation for the purpose of holding and patenting and working the *the* said the J. C. Johnston and other property, and that if he, the said Johnston, would assist them in so doing by making over his remaining interest your orator should have all the advantages of the said company, and that he,
301 the said Chatfield, as agent of the said company, and the said company, the said The Fulton Mining Company, would, without expense to your orator of any kind, make over to him in shares of said company the full value of his said interest, and that he, the said Chatfield, and the said company would hold his said interest in trust for him, your orator, as aforesaid.

And your orator charges that this was said and done in the presence of the said Thompson and Sayre, and that the said Dunscombe and Wilson had full notice thereof before, at the time, and subsequent to the incorporation of the said company; that the said Chatfield was then and there acting for the said company; that the said company and every member thereof had full notice and knowledge thereof, and that in the way and by these means and not otherwise did your — part with the said the one undivided one-fourth interest in the said the J. C. Johnston lode, which so as aforesaid remained to him after his sale to the said Chatfield and Wilson aforesaid; and your orator charges that he has never received any shares of said company nor any value for said one undivided fourth interest, as will hereinafter more fully appear.

XII.

That, as *in* hereinbefore stated, on or about the tenth day of August, A. D. 1880, the said Joseph W. Adair and George A. Crittenden by their deed conveyed all their right, title, and interest in and to the said "J. C. Johnston" lode and vein mining claim to the defendant J. C. Acheson, which said deed is recorded in Book X, page 56, in the office of the clerk and register of Gunnison county aforesaid, and that said Acheson acted in said purchase by power of attorney for himself and defendants Dunscombe and Seaver.

302 IV.

And your orator further shows unto your honor that on or about the fourteenth day of September, 1880, the defendants Isaac W. Chatfield and William J. Wilson made and entered into an agreement with your orator for the purchase by them from him of an undivided one-fourth interest of, in, and to the said "J. C. John-

ston" lode and vein mining claim and other mining claims, to wit, and undivided one-half interest in the Kansas City, Combination, John Lilly, J. C. and Smuggler C. O. D. lode and vein mining claim, all situate in said Roaring Fork mining district, and that thereupon a certain paper-writing, commonly called a title bond, was executed by the said Johnston to the said Chatfield, to have and to hold the same unto himself and in trust for the said William J. Wilson, a copy of which bond is hereunto annexed and made a part of this bill of complaint, and to which, for greater certainty, you orator begs leave to refer.

V.

That on or about the twelfth day of October, A. D. 1880, your orator was in the said city of Leadville, and that then and there, in the office of the said defendants Thompson and Sayre, who were then and are now partners as attorneys-at-law, he met the said defendant Chatfield, and was urged by him to make over to him, not only the undivided one-quarter interest in the said "J. C. Johnston" lode or vein mining claim, as called for and agreed upon in the title bond aforesaid, but his remaining undivided one-quarter interest, the title to which still was in him, in order that the said Chatfield, Wilson, Thompson, Sayre, and Dunscombe, who had associated themselves together, as hereinafter more fully set forth, might form and organize a corporate body and company for the purpose
303 of possessing, working, and developing the said "J. C. Johnston" lode and vein mining claim and other lode and vein mining claims in said mining district.

VI.

Your orator further alleges that at that time and prior thereto he had implicit confidence in the said defendants Chatfield, Thompson, Sayre, Wilson, Dunscombe, and others hereinafter named, and more particularly in the said Chatfield, Thompson, and Sayre, which two latter were at that time the attorneys of your orator, as well as of said Chatfield, and who had then had in their charge and possession certain valuable papers belonging unto your orator, and that then and there the said Chatfield *and said Chatfield* and said Thompson and Sayre advised your orator that as he was a laboring miner and away from Leadville, prospecting or doing other work in and about mines in the mountains, it would be more advantageous for him to join with them, the said Chatfield, Thompson, Sayre, Wilson, and Dunscombe, who had associated themselves together for the purpose of possessing and developing mining properties in the said Roaring Fork mining district, in forming and incorporating a stock company; that the said Chatfield would convey all the interest in the said "J. C. Johnston" lode or vein mining claim so as aforesaid to be acquired by him to the said company to be formed and incorporated, and that afterwards, whenever thereunto requested by your orator, the said company would convey and transfer to him a one-quarter interest of the shares of mining stock to be issued by said

company to be as aforesaid incorporated, and that said Chatfield, acting for and in behalf of said association, then and there urged upon your orator the advantages of incorporating said
304 company and promised and agreed to and with your orator that if he would join with them in manner aforesaid so as to enable the said associates to organize the said company by conveying in trust to him his said quarter interest in the said "J. C. Johnston" lode and vein mining claim he, the said Chatfield, and the said company would convey and transfer to your orator in shares and stock of said company equal to the value of your orator's interest in said lode as then owned and possessed by him, and that the said Chatfield would hold his said interest in trust for your orator and would convey the same to the said company when the same should be incorporated according to the terms and conditions above set forth, and that thereupon your orator, in consideration as aforesaid and without any other consideration, made, executed, and delivered on October 12th, 1880, unto the said Chatfield a certain mining deed for all his right, title, and interest in and to the said "J. C. Johnston" lode or vein mining claim—that is to say, an undivided one-quarter interest in said lode—to carry out the terms of the title bond aforesaid and an undivided one-quarter interest in said lode to carry out the terms of the agreement aforesaid, and that the said Chatfield, acting for and in behalf of the said association, accepted the said deed charged with the said covenants and agreements contemporaneous with the execution thereof and with the aforesaid special trusts in behalf of your orator, and the said Chatfield and Fulton Mining Company became and still are the trustees of your orator in this behalf.

VII.

And your orator further alleges that the said deed was on or about the twelfth day of October, A. D. 1880, prepared by the said
305 Thompson and Sayre, as attorneys as aforesaid, with full knowledge and understanding that the words in said deed, to wit, "all my right, title, and interest in and to said 'J. C. Johnston' lode or mining claim," as will more fully appear by reference to a copy thereof hereto annexed and made a part of this your orator's bill of complaint, mean and have no other meaning than the one-quarter interest in said lode and vein mining claim agreed to be sold and conveyed to said Chatfield and said Wilson as aforesaid and the said one undivided one-quarter interest in said lode or mining claim so as aforesaid agreed by your orator to be conveyed to said Chatfield, as the agent of the said association and of the said mining company to be as aforesaid incorporated; which said last-mentioned interest and trust was accepted by said Chatfield, as the agent of the said association and of the said mining company to be as aforesaid incorporated and as the trustee of the said Johnston; and then the said defendants, Edward Dunscombe, Charles I. Thompson, Daniel Sayre, and William J. Wilson, and the said The Fulton Mining Company had full notice and knowledge of the said covenants and agreements made as aforesaid by and between the said Chatfield

and the said Johnston, not only at the time that the said covenants and agreements were entered into, but subsequent thereto and up to the present time.

IX.

And your orator further shows unto your honor that on or about the eleventh day of December, A. D. 1880, the said defendants Chatfield, Dunscombe, Wilson, Thompson, and Sayre formed and organized the said The Fulton Mining Company and incorporated the same under the laws of the State of Colorado, with the
306 principal business office and directors as hereinbefore set forth, all of which will more fully appear by reference to the certificate of incorporation of said company of record in the office of the secretary of state, and that thereupon, to wit, on December 14, 1880, the said Isaac W. Chatfield conveyed by his mining deed of record in Book Y, page 199 of the records of Gunnison county aforesaid, all his right, title, and interest of, in, and to the said "J. C. Johnston" lode and vein mining claim to the said The Fulton Mining Company, being the said right, title, and interest in and to the said "J. C. Johnston" lode and vein mining claim so as aforesaid acquired by the said Chatfield from your orator.

X.

And your orator further shows unto your honor that the said The Fulton Mining Company has received a deed of conveyance from the said Crittenden and Adair conveying unto the said company the interest which they had and possessed in the said "J. C. Johnston" lode and vein mining claim, and that the said company has heretofore claimed and now claims to own the said lode and mining claim, and has been and is now in peaceable possession of the same, and has entered into divers leases and contracts concerning the working and development of the same, and has taken therefrom a large and valuable amount of mineral ore, and has realized and received various large sums of money from the leasing and working of the said mining claim and from the sale of the ore taken from the same, and that the said The Fulton Mining Company has obtained from the Government of the United States of
307 America a patent for the said "J. C. Johnston" lode and vein mining claim; which said patent was issued to said company on or about the fifteenth day of February, A. D. 1883, as your orator is informed and believes.

XI.

And your orator further shows unto your honor that he has on divers occasions applied to the said Chatfield and to the said Dunscombe, Thompson, Sayre, and Wilson and to the said The Fulton Mining Company to convey and to transfer to him such number of shares of stock in the said The Fulton Mining Company as he of right was entitled to receive under and by virtue of the covenants and agreements so as aforesaid made by and between your orator

and the said defendant Chatfield, acting for and in behalf of the said association and the said The Fulton Mining Company, and for an accounting between your orator and the said The Fulton Mining Company of what, if any, dividend or dividends, increase, or profits might have accrued to your orator as the lawful and rightful owner of said shares of stock in said company by reason of the development of the said mining company or by the sale of ore taken from the same or in any other manner, and that the said company should pay to your orator as aforesaid what sum or sums of money should be found due or owing to your orator as aforesaid by reason of the premises.

And your orator well hoped that the said defendants Chatfield, Dunscombe, Thompson, Sayre, and Wilson and the said The Fulton Mining Company would have complied therewith, as in equity and good conscience they ought to have done; but now so it is, may it please your honor, that the said Isaac W. Chatfield, combining
308 and confederating with the said Charles I. Thompson, Daniel Sayre, Edward Dunscombe, Margaret Dunscombe, J. C. Acheson, Elizabeth Acheson, James E Seaver, Belle R. Seaver, William C. Auburn, George W. Crittenden, Howard W. Holden, the said The Fulton Mining Company, and with divers other persons to your orator unknown, but whose names when discovered he prays may be herein inserted as defendants with apt and proper words to charge them as such, how to injure, oppress, and defraud your orator, respectively pretend that the said mining deed hereto annexed and to which reference is hereby made from your orator to Chatfield of date October 12, A. D. 1880, conveying or assuming to convey all "the right, title, and interest" of your orator in the said "J. C. Johnston" lode and mining claim upon the expressed consideration of twelve hundred dollars was *bona fide* and unaffected by any contemporaneous covenants and agreements, and that thereupon the said Fulton Mining Company by the subsequent deed from the said Chatfield as aforesaid took all the said right, title, and interest of your orator in said lode and mining claim, and, further, pretend that even if the said agreements and covenants existed between the said Chatfield and the said Johnston, your orator herein, the said Fulton Mining Company were not charged with notice thereof.

Whereas your orator expressly charges the truth to be that, as hereinbefore stated, your orator located the lode known as Smuggler 2, and by agreement as aforesaid with the said Dunscombe, Acheson, and Seaver inserted upon the certificate of location thereof the names of Margaret Dunscombe and Belle R. Seaver, defendants herein; that thereupon your orator, as before stated, located the said Smug-
309 gler 2 as the said the "J. C. Johnston" lode, and put in the location certificate the names of the said Crittenden and Adair; that the said Crittenden and Adair sold their interest therein to the said Acheson, who represented the said Dunscombe and Seaver by power of Attorney as aforesaid or by verbal agreement or otherwise, and the said Margaret Dunscombe and Belle R. Seaver know of this purchase and consented thereto and held their interest in

said "Smuggler 2" simply by right of their husbands, defendants herein; that thereupon the said Chatfield and Wm. Wilson purchased one undivided one-fourth interest in said J. C. Johnston lode from your orator for (1,200) twelve hundred dollars, as is expressed in the said title bond recorded in Book "Y," page 62 of the records of Gunnison county and hereunto annexed as aforesaid; that thereupon the said Chatfield refused to pay to your orator a part of the said purchase-money, alleging that the said Margaret Dunscombe, Belle R. Seaver, and their grantees were about to commence legal proceedings to adverse the title or the claim to a patent for the said J. C. Johnston lode that would be advanced and made by the said company which they, the said parties as aforesaid, intended to form, and that he, said Johnston, your orator, would have to enter into a contract with him, the said Chatfield, as the agent of the said parties about to organize the said company, and that in and by said contract the said Chatfield as such agent bound himself to return to your orator one-eighth interest in and to said lode free and discharged from all expense whatsoever, and the other eighth interest was to go to his share in the expenses of said pretended legal proceedings; that the said Thompson and Sayre were the attorneys who drew up the said contract and were to undertake the said proceedings, and it was clearly understood and agreed by and
310 between your orator and the said Chatfield as agent of said company that as soon as said company was formed or the claim and lode aforesaid was patented by said company the said company would convey to your orator his one undivided fourth interest so as aforesaid conveyed to the said Chatfield as agent of said company and as trustee of your orator and afterwards conveyed by said Chatfield to said company charged with the said trust; but that if the said legal proceedings were undertaken and necessary, then the said Chatfield and the said company were to convey to him in the stock or shares of said company the said one undivided eighth interest free and discharged of all expense or cost to your orator whatever.

And your orator further shows that the said Chatfield, combining and confederating with the said defendants and other parties how to wrong, injure, oppress, and defraud your orator in the premises, caused to be instituted among themselves certain legal proceedings in the circuit court of the United States for the district of Colorado, wherein the said Edward F. Brown, Elizabeth H. Acheson, William C. Auburn, Bella R. Seaver, and James E. Seaver were parties complainant and the said Edward Dunscombe, Margaret Dunscombe, Isaac W. Chatfield, W. J. Wilson, Daniel Sayer, Charles I. Thompson, and The Fulton Mining Company were parties defendant, and which said action is marked and distinguished on the docket of the said court by the number "708," as your orator is informed and believes, and your orator begs leave to refer to the said docket for greater certainty as to the nature and character of the said action; and the said parties to said action, combining and confederating with the said Chatfield and the said Fulton Mining Company as aforesaid,
311 pretended that the said action was brought *bona fide* and upon

a substantial cause of action; whereas your orator expressly charges the fact to be that said complainants to said pretended action were estopped by the record from adversing the said application for patent by the said company; that they were all interested in the said J. C. Johnston lode, and that the said proceedings were undertaken simply to defraud your orator out of the said one-eighth interest as aforesaid under said agreement, but that the said pretended suit was not begun until long after the said company was incorporated and the said contract had gone into effect, and that after the said action was allowed to remain on the docket for a long time it was compromised and settled by the parties, each side, plaintiff and defendant, paying their own costs; all of which clearly shows the intent to defraud your orator and was contrary to equity and good conscience.

And your orator further shows that the said Chatfield, for himself and as agent of the said company, combining and confederating as aforesaid with the said Thompson, Sayer, Dunscombe, the said Fulton Mining Company, and other confederates how further to injure and oppress your orator, refused to return to your orator his said undivided one-fourth interest, asserting that the said legal proceedings were necessary and essential and that your orator was not entitled thereto, and further refused to give unto your orator the said one undivided eighth interest, either in the stock or shares of the said company or otherwise, and further pretending to give to your orator a true copy of the contract so as aforesaid on the 12th day of October, A. D. 1885, made between the said Chatfield and the
312 said Johnston, your orator, aforesaid; whereas your orator expressly charges that according to the best of your orator's information and belief the said copy so as aforesaid given by the said Chatfield to your orator — is attached hereto and made part of this bill of complaint and marked Exhibit "E" is not a true copy of the said original contract, but your orator further charges that in and by said contract as hereto annexed the said Chatfield is estopped from denying that he covenanted and agreed to return and convey to the said Johnston, your orator herein, a one undivided eighth interest in the said lode and mining claim and a one undivided *one*-fourth in case the said Chatfield did not undertake the legal proceedings therein provided for and which your orator expressly charges never were undertaken by him; and your orator further charges that he has never received any interest nor any value whatsoever for the said one undivided fourth interest in said lode.

And your orator further shows unto your honor that the said Fulton Mining Company and the said Chatfield or the said Thompson and Sayer, who, as hereinbefore stated, were the attorneys of the said Chatfield and the said Johnston, your orator herein, and, as your orator is informed and believes, of the said Fulton Mining Company, and had the entire confidence of your orator, have retained all the original contracts made between them or either of them and your orator, and that they or some of them still have the said papers and your orator had well hoped that the said parties would have furnished your orator true and correct copies of all of

said contracts, so that your orator might have attached them as exhibits to this his bill of complaint.

313 And your orator prays that the said Chatfield and the said Thompson and Sayer and the said Fulton Mining Company and the said defendants and each and every of them may be required to produce the originals of all of the said contracts and agreements, and more particularly of the contract, the copy of which is hereto annexed and made part of this bill of complaint, and that further that they and each of them may be required to exhibit the date of the original deed from the said Crittenden and Adair to the said Fulton Mining Company and the dates of the acknowledgements by the grantees therein to *to* the said deed in order that the title of the said company to the said lode may fully appear, as in justice and equity ought to be done in the premises.

And your orator further shows to your honor that, as hereinbefore set forth and alleged, the said The Fulton Mining Company made an application for a patent and, under the statute in such case made and provided, was required to exhibit and file certain proofs of title to the said "J. C. Johnston" lode and mining claim, and to certify unto the proper land office of the district wherein the said lode was located that the said applicant for the said patent, the said The Fulton Mining Company, was the true and rightful owner of the said mining claim and had a good, true, and perfect title thereunto against all persons other than the United States of America; whereas your orator is informed and believes and so charges the fact to be that the said The Fulton Mining Company and its incorporators, officers, and directors then and there well knew that the said company neither at the time of the said application for the said patent upon the said "J. C. Johnston" lode and vein

314 mining claim nor at any time prior or subsequent thereto ever had any true or perfect title thereto, and that the said application was made with the full knowledge on the part of the then president, officers, and directors of the said company that the claim of title as set forth in the record of the said application and of the said patent on file in the said land office, to which reference is hereby made, was false and fraudulent, and that the representations as to title made in said record upon which said patent was obtained were not true and made to deceive the authorities of the said United States; and your orator further charges the truth to be that the said Chatfield and the said Fulton Mining Company well knew that they held the said one undivided fourth (¼) interest in said "J. C. Johnston" lode as the trustees of the said "J. C. Johnston," your orator herein, free and discharged of all cost and expense to him, the said Johnston, and that your orator executed and delivered the said deed for the single purpose of enabling the said Chatfield and other defendants as aforesaid herein to form and incorporate the said company and obtain said patent, and upon the express covenant as aforesaid, known to them and each of them, to return the same in due time in stock and shares to the said Johnston, your orator aforesaid.

And your orator further shows that the said Fulton Mining Com-

pany, its president, officers, and directors, then and now knew and well know that they nor any of them nor the said company had any right, title, or interest in another one undivided one-fourth in said "J. C. Johnston" lode and mining claim and have not now nor ever have had any true and perfect title as represented by said company in said application for patent in the said J. C. Johnston lode.

315 All of which actings, doings, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In tender consideration whereof and forasmuch as your orator is entirely remediless in the premises at and by the strict rules of law and is only relievable in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said Isaac W. Chatfield, William J. Wilson, Edward Dunscombe, Daniel Sayer, Charles I. Thompson, Edward F. Brown, J. C. Acheson, Elizabeth H. Acheson, James E. Seaver, Howard M. Holden, Bella R. Seaver, Margaret Dunscombe, William C. Auburn, G. W. Crittenden, and The Fulton Mining Company, a corporation, defendants herein as aforesaid, and their confederates, whenever the same may be discovered as aforesaid, may respectively full, true, direct, and perfect answers make herein (but not upon their several corporal oaths, the same being expressly waived by your orator), according to the best of their respective knowledge, information, and belief, to all and singular the matters and things, allegations, and charges hereinbefore set forth and contained, and that as fully and particularly in every respect as if the same were here again repeated and they and each of them thereunto particularly interrogated, and more especially that they and each of them may respectively set forth according to the best of their respective information and belief all the facts in reference to the matters herein, and more particularly that the said Edward Dunscombe, defendant, may say and declare whether he is not now and has not been president of the said Fulton Mining Com-

316 pany and what, if any, relation or kinship exists between himself and the said Charles I. Thompson or the said Daniel Sayre, and whether they, the said Thompson and the said Sayre, were and are not his attorneys, and whether the said J. C. Acheson did not, as herein alleged, have a power of attorney to act for himself and James E. Seaver, and whether the said Acheson was not authorized to buy for him and said Seaver from the said Crittenden and Adair their interest in the said J. C. Johnston lode, and whether it was not so done, and whether the said Thompson and Sayre were not then, as alleged herein, the attorneys of the said Chatfield, and whether he did not act for the said Fulton Mining Company in procuring its patent aforesaid and as such did not certify to the facts as set up in the said application, and whether he did not know of the defective title in the said company to the said lode and as to any other facts and things charged herein, and, further, that the said Fulton Mining Company may show the facts of its incorporation and title set up to said lode and whether it has leased the said prop-

erty since the date of the deeds so as aforesaid made by Chatfield and Crittenden and Adair to said company; and, if so, to whom and upon what terms and what amounts of ore and what sums of money have been taken from said claim or realized from the sales of ore therefrom or from said leases and contracts, and, further, that it may render a true, full, and perfect itemized account of its operations and use of said lode since the said dates, and that it may do the same by its proper officer and under its corporate seal, and, further, that the said Chatfield and the said company may exhibit all contracts with your orator and answer truly whether the said title bond for one undivided fourth interest was not the true contract with said Johnston, and whether the said Wm. J. Wil-
317 son was not interested with him in said bargain and sale, and whether he has frequently admitted to your orator that he was indebted to him in the shares and stock of said company, but refused and neglected to secure the same, and whether he has not so as aforesaid admitted as the agent and representative of the said company and as to all other matters and things set forth herein, and, further, that the said William J. Wilson may set forth truly whether he was a part purchaser with the said Chatfield of the one undivided fourth interest as aforesaid from your orator, and whether he does not know of his own knowledge the truth of the charges herein, and, further, that each and—

That this honorable court may order, adjudge, and decree in the premises that your orator is entitled to his certain and proper interest in the shares and stock of the said The Fulton Mining Company, and that the same may be decreed to be a one undivided fourth interest in the said shares and stock according to the contract and agreement with the said Chatfield as agent of said company as hereinbefore set forth.

That the said The Fulton Mining Company may be decreed to render a true, full, and complete account of all its receipts and expenditures because of said J. C. Johnston lode, of all ores taken therefrom, all monies realized, and of all leases and contracts entered into herein since the eleventh (11th) of December, A. D. 1885, and may further be decreed to pay unto your orator his full share in the income, rents, profits, increase, and receipts of the said lode since the said date.

318 That your orator be decreed as entitled to a one undivided fourth interest of, in, and to the said lode and vein mining claim, and that the same be set apart to him, and that the said interest be delivered to him and the proper deed executed therefor.

And that the said Chatfield and the said Fulton Company may be decreed to carry out and execute the trust which they assumed in the contract and agreement made with your orator by which alone they obtained his deed to his entire interest in said lode.

And that the defendants may pay unto your orator his costs and charges in this behalf most wrongfully sustained.

And further that your orator may have such other and further

relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Isaac W. Chatfield, William J. Wilson, Edward Dunscombe, Daniel Sayre, Charles I. Thompson, Edward F. Brown, J. C. Acheson, Elizabeth H. Acheson, James E. Seaver, Bella R. Seaver, Margaret Dunscombe, William C. Auburn, J. W. Adair, G. W. Crittenden, Howard W. Holden, and the Fulton Mining Company, a corporation, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable court, in chancery sitting, and then and there to answer unto the premises, and further to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

319 And your orator will ever pray and so forth.

(Signed) JOHN C. JOHNSTON.

L. C. NORTHROP,
Comp't's Sol'c'r.

Here follows Exhibits "A," " B," " C," and " D," not copied.

UNITED STATES OF AMERICA, }
State of Colorado, County of Arapahoe, } *ss:*

John C. Johnston, being first duly sworn, deposes and says that he is the complainant in the above-entitled cause of action; that he has read and understands the foregoing bill; that the matters and things therein contained are — of his own knowledge except as to those matters stated on information and belief, and as to those matters he believes them to be true.

(Signed) JOHN C. JOHNSTON.

Sworn to and subscribed before me this 1st day of August, A. D. 1885.

(Signed) JOHN HIPP,
Notary Public.

(Endorsed:) No. 1815. United States of America, district of Colorado, eighth circuit. In the circuit court, in chancery sitting. John C. Johnston, complainant, *v.* Isaac W. Chatfield, Fulton Mining Co., a corporation, *et al.*, def'ts. Bill of complaint. Filed Sep. 23, 1885. Edward F. Bishop, clerk. L. C. Northrop, comp't's sol'c'r.

A true copy.
Teste:
[SEAL.] EDWARD F. BISHOP, *Clerk*,
By F. W. TUPPER, *Deputy Clerk.*

320 (Endorsed:) No. 2244. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Copy of bill of com-

plaint in former proceedings and stipulation that it be read as evidence. Filed Nov. 3, 188–. William A. Willard, clerk.

And afterwards and on, to wit, the 8th day of November, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Defendants Adopt Answer of Standard Mining Company.

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY *et al.*
} 2244. In Chancery. Bill for a Deed and for Other Relief.

At this day comes the said complainant, by C. S. Wilson, Esq., his solicitor, and the said defendants, Isaac W. Chatfield, Charles I. Thomson, and Daniel Sayre, by C. I. Thomson, Esq., their solicitor, also come.

And thereupon the said defendants, Chatfield, Thomson and Sayre, say they will and do withdraw their respective demurrers to the said complainant's bill of complaint, and will and do adopt the answer of *of* the said defendant, The Standard Mining Company, as their answer to the said bill of complaint, and that the said complainant's replication to the said answer may stand as a replication to their answer so adopted.

321 And afterwards and on, to wit, 9th day of November, A. D. 1888, came John W. Webster, Esq., an examiner in chancery, and filed in said court and in said cause his report of the testimony taken before him on behalf of complainants in said cause, and the said report is in words and figures as follows, to wit:

Examiner's Report of Testimony Behalf Complainant.

In the Circuit Court of the United States for the District of Colorado.
In Equity.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et als.*, Defendants.
}

On application of the complainant by C. S. Wilson, Esq., solicitor, it appearing that the said complainant desire- the evidence to be adduced in said cause to be taken orally, under the sixty-seventh rule of the Supreme Court of the United States, and amendments, it is ordered that Monday, the 9th day of April, A. D. 1888, at ten o'clock a. m., at my office, in Denver, be, and is hereby, fixed as the time and place for taking the same, and that two days' notice be

given to defendants' solicitor of time and place at which the examination of witnesses in said cause will commence.

Dated at Denver this March 31st, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

322 In the Circuit Court of the United States for the District of Colorado. In Equity.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et als.*, Defendant-.

To Hugh Butler, solicitor for the above-named *defendant:*

Take notice that the complainant desire- the evidence to be adduced in the above-entitled cause to be taken orally under the sixty-seventh rule in equity prescribed by the Supreme Court, and by an order of John W. Webster, Esq., one of the examiners of said court, lately made in said cause, it is directed that two days' notice of the time and place at which the examination of witnesses in said cause will commence be given to the defendants' solicitors. You will further take notice that the examination of witnesses on behalf of the complainant in said cause will commence before the said examiner, at his office, in the city of Denver, on the 28th day of May, A. D. 1888, at ten o'clock a. m., and proceed as said examiner may direct.

Dated at Denver this May 24th, A. D. 1888.

CHAS. I. THOMSON,
Solicitors for Def'ts.

I hereby acknowledge service on me of a copy of the within notice this — day of May, A. D. 1888.

HUGH BUTLER
Solicitor for Complain-t.

323 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et als.*, Defendants. } In Chancery.

Testimony of witnesses taken before me, John W. Webster, one of the examiners in chancery of the circuit court of the United States for the district of Colorado, under and by virtue of the 67th rule of the Supreme Court of the United States and amendments thereto, and also by consent of counsel and by virtue of an order by me made as examiner fixing the time and place for the examination of witnesses, a copy of which order and notice thereof is hereto attached, in a certain suit or matter in controversy now pending and undetermined in said circuit court, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas *et als.* are defendants, on behalf of the complainant, this Monday, April 9th, A. D. 188–, at the hour of ten o'clock a. m.

Present before me C. S. Wilson and Hugh Butler, Esqs., solicitors for complainant, and C. I. Thompson, Esq., solicitor for defendant The Standard Mining Co. of Kansas City.

324 MONDAY, *April 9th*, 188–, 10 a. m.

Thereupon complainant introduced JOHN C. JOHNSON as a witness, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Direct examination by Mr. WILSON:

Q. Are you the complainant in this case, Mr. Johnston?
A. Yes, sir.
Q. Where do you reside?
A. I reside in Littleton, Arapahoe county, Colorado.
Q. How long have you lived there?
A. Well, I have lived there since the fall of 1873.
Q. Have you lived there continuously since that time?
A. No, sir; my family has, but I have been in different mining camps.
Q. What experience have you had in mining, if any?
A. Well, I started out in 1874 and have been prospecting and mining until 1882, I guess—the summer of 1882.
Q. State more in detail what your experience in mining has been.
A. My first mining was as a gulch miner. I started out on what is called old Spanish bar, up the river here about three miles. We

worked there—a man by the name — Rouse and I. He came here with me.

Q. Where did you come from?

A. I came from the State of Missouri to Colorado.

Q. Well, go on.

A. In 1874, I think it was, I went to San Juan, or started there with a party of prospectors, four or five of us, and went over to Gunnison county. We were prospecting for gulch mines and
325 prospected the old Washington gulch; came out the latter part of the season and went home to Littleton.

Q. What experience have you had in lode mining and prospecting?

A. I think it was in 1875 or 1876—'75—I went to — and prospected in that vicinity for lode mines; made some locations, but didn't make any discoveries that amounted to anything. In 1876 or 1877 I went to the Black Hills and prospected.

Q. Did you find any mines there?

A. No, sir, I did not; made locations, but didn't stay long enough to prove them up; came back and went to Leadville—came back in 1877 and went to Leadville in 1878.

Q. What did you do there?

A. Prospected. I located the Little Anna and Pearl mines in Little Evans gulch; worked them that summer.

Q. Were those pay mines?

A. No, sir. During that time I worked in pay mines, of course, at intervals. I worked in the Dyer mine in Leadville, at the head of Iowa gulch, and also done some contract work on an extention of the Dyer.

Q. Was this in the fall of 1878?

A. Yes, it was in the fall of 1878 that I worked in the Dyer; in November, probably.

Q. Where were you in 1879?

A. In 1879 I was in Leadville and went to Aspen in the fall of 1879 prospecting.

Q. What did you do at Aspen in the way of prospecting?

A. I went over there and located an extention of the Smuggler, which is the J. C. Johnston now, and called it the Badger Boy, but it was not recorded as such; I located it in 1879. I came home during the winter and I had this same friend that came out with me originally—he was here in Denver at that time—Mr. Rouse, and he lived here in Denver. He worked up this grub-stake deal
326 between myself and the original parties to this case, Dunscomb, Atchison, and Seever.

Q. I will ask you, Mr. Johnston, if you were acquainted with the premises known as the J. C. Johnston Lode mining claim, located near Aspen, in Pitkin county, Colorado.

A. Yes, sir; I made the location.

Q. When was that?

A. The location was made of Smuggler No. 2—it was made, I think, about June 1st; somewhere along about that time.

Q. What year?

A. In 1880.
Q. What location are you referring to now?
A. Smuggler 2, the first location.
Q. I am asking you about the Johnston.
A. The Johnston location was made along about August 1st.
Q. Please look at that document (handing witness paper). I will ask you if you signed, or caused to be signed, such a paper as that.
A. Yes, sir.
Q. Did you have it recorded?
A. Well, I suppose it was; it was sent out for record.
Q. Who sent it?
A. I gave it to Mr. Chatfield, I think.
Q. Where was it sent to?
A. Sent to Gunnison City; we were then in Gunnison county.

Said paper is offered in evidence by complainant and is hereto attached and marked Exhibit A.

Q. Did you ever make any disposition of your interest or any part of it in the J. C. Johnston claim?
A. Yes, sir; I sold an undivided one-fourth interest to I. W. Chatfield; but in the first place I made a deal with Mr.
327 Atchison and entered into an agreement which was never perfected.
Q. I am not asking you now about that. Did you execute a paper of which this is a copy?
A. Yes, sir; I guess I did.

Said paper offered in evidence by complainant and hereto attached, marked Exhibit B.

Q. Did you execute such a deed as that (handing witness paper)?
A. Yes, sir—that is, I signed a deed similar to it. I suppose that is a copy.

Said deed offered in evidence by complainant and hereto attached, marked Exhibit C.

Q. Did you at that time execute any other paper or agreement with Mr. Chatfi*led*?
A. Yes, sir; Chatfield and I entered into *to* an agreement, a copy of which I have.
Q. Is this a copy of it (handing witness paper)?
A. Yes, sir.

Said contract offered in evidence by complainant and hereto attached, marked Exhibit D.

Q. Does that correctly show the erasures and interlineations made in the original?
A. I think it does. I was under the impression there was not so much of it erased as there is, but I guess it shows the proper corrections; that I could not say positively, but I thought there was only two and a half or three lines erased.

Q. You saw the original last Saturday?

A. Yes, sir; and I believe this to be a copy of the original.

Q. Now, state fully and in detail all the circumstances under which you executed this and the deed to Chatfield and this agree-
328 ment with Chatfield and the title bond which has just been introduced in evidence.

A. Well, the way to get at that properly would be to commence at the sale to Chatfield.

Q. Commence with that first.

A. I sold Mr. Chatfield an undivided one-fourth interest in the J. C. Johnston location for $1,200.00 and gave him a bond for a deed and he paid me $100.00 down and was to pay the balance in monthly installments. I was to take a team which was at Leadville, and I went out afterwards for the team, and he brought the mares down to Leadville, and when they came to deliver me up the team he said that he could not and would not pay me any more of the money until I perfected the title; that there was a suit commenced or about to be commenced against the Johnston by the Smuggler people.

Q. Who were the Smuggler people?

A. Dunscomb, Atchison, and Seever. So I finally agreed with him he was to pay me this team and I was to go for them, and after I got the team the balance was to be paid in monthly instalments of $100.00 a month, and the team was to be taken at $350.00. After I got up to Leadville Mr. Chatfield brought the horses down and commenced to talk about the matter, and he said that he would not let me have the stock or pay me anything unless I feed some attorney to fight the case.

Q. In that conversation what did he say about a lawsuit—that is, did he refer to a suit then pending or a suit that was threatened?

A. He told me that there was a suit brought them—that there was a suit then brought.

329 Q. Did he describe the nature of that suit and the parties to it?

A. Why, of course; yes, sir. He told me that Dunscomb, Atcheson, and Seever were the parties, the original locators of this mine, the Smuggler Two—were the parties that had brought the suit—and unless I would fee attorneys to defend this title that he could not pay me and would not pay me any more money. I told him I was willing to do whatever was right.

Q. Did you have any conversation with Chatfield with reference to the merits of the Smuggler No. 2 claim as against the J. C. Johnston location?

A. I explained that to him when I made the sale to him—I explained the location when I made the sale. I can't remember that we had any conversation about the locations at this particular time, but I think we did. I think the matter was all talked over there at the time I made the sale to him. At the time the deed was made the whole matter was explained to him, and I told him about the location of the Smuggler 2 and the location of the Johnston.

Q. When was that?

A. It was some time in the fall of 1880.

Q. Was it the time that you executed this title bond?

A. Yes; the day that I executed this title bond we talked it over at my house; when he and I came down-town the next day and executed the bond.

Q. Did you talk it over again upon the day you executed the deed?

A. Yes, sir; down on the sidewalk here in town we talked the matter over.

Q. I mean at the time of the execution of the deed?

A. I don't know that we talked over the title there; could not say positively, but think we did. I think the matter was all talked over.

330 Q. Who was present at Leadville when you executed the deed?

A. Mr. Thompson and Mr. Sayr and Mr. Chatfield. Then the matter was all talked over.

Q. How did Thompson and Sayr come to be present?

A. Mr. Chatfield proposed to me. I told him I was willing to do whatever was right, and he said that he knew where he could get as good a lawyer as any in the State, and I asked him who it was and he said Mr. Thompson and Mr. Sayr, and he went down there after dinner. This matter was all talked over. They asked me $500.00 in cash to defend these suits or this suit or they would take a one-eighth interest in the mine. Of course, I didn't have any money, and I told them I would give one-eighth interest in the mine for defending the suit, provided Chatfield would pay the expenses of the suit; at least I was not to pay out any money, and I was to give them one-eighth interest, and we agreed upon that, and I was to deed it over to Chatfield, which I did.

Q. Did you have any reason to expect a suit or claim of that kind besides what Chatfield told you?

A. No, sir; I did not, but from what Chatfield told me I supposed there would be a suit.

Q. Had your original partners interested in the Smuggler No. 2 with you ever threatened a suit against you on account of the location of the J. C. Johnston?

A. Mr. Atchison threatened suit against me at Leadville, but I settled that with him and entered into an agreement about it. Mr. Atchison came to Leadville and bought out Mr. Adair and Mr. Crittenden. Their half interest in the J. C. Johnston location

331 paid them so much money for their expenses and $1,000.00 besides—a part of this was for a credit we owed Mr. Crittenden—and after that purchase I agreed with Mr. Atchison that if he would pay Mr. White and pay all of the bills I had contracted and pay me $525.00 I would deed him back one-fourth interest of the J. C. Johnston. Well, he didn't have the money then, but he agreed to meet me at my house at Littleton the following Saturday. He paid Mr. White $100.00 down and I think he paid me $25.00. We came home, but Mr. Atchison has not come yet—I hav-n't seen him since; $10.00 of this money that he owed Mr. Wh-te I had borrowed to pay for a wheelbarrow, I believe, or a truck of some kind.

After that I made this contract with Chatfield—made this sale to Mr. Chatfield. We had an understanding that Mr. Wilson was a partner with Mr. Chatfield; Mr. Chatfield said so at the time.

Q. State the circumstances under which you made the J. C. Johnston location.

A. We had went in there early in the spring, and these parties was to furnish grub and money to carry on the development.

Q. What parties?

A. Dunscomb, Atchison, and Seevers. Mr. Atchison had a power of attorney and was acting for the balance of the party.

Q. Was there a written contract between you?

A. Yes, sir.

—. Have you it?

A. No, sir.

Q. Have you a copy?

A. No, sir; I left it with Thompson & Sayr.

Q. Have you tried to get a copy of the original?

A. I have tried to get the original or a copy.

Q. What efforts have you made to get it?

332 A. I wrote to Thompson & Sayr myself and I got Mr. Northrup to write, and Mr. Northrup went up there, and I think I gave him instructions to get them or copies.

Q. Did they refuse your request for it?

A. Yes, sir; they have, so far.

Q. Now, state what that contract was as fully as you can remember it.

A. Well, of course, I can't remember exactly what the contract was, but I can give it as near as I can. The sum and substance of it was me and Mr. Rouse agreed—I had this ground located in the fall of 1879, but I didn't make any record of it, but I done some work and was holding it. I agreed to put this grouud in and Mr. Rouse and myself agreed to go over there and work and develop the mine and prospect; also we were to receive $37.50 per month and board each, and an undivided one-fourth interest each, and these parties they were to furnish the money—Dunscomb, Atchison, & Seevers, and were to receive the other half of all locations made.

Q. What amount of money were they to furnish?

A. They were to furnish $20,000.00.

Q. For the development of this particular claim?

A. No, sir; I had three or four claims at that time. We located the Smuggler 2 and the J. C. Johnston and the John G. Lilly and the Combination.

Q. And these other properties were included in the title bond and included in the grub-stake contract?

A. Yes, sir.

Q. How was this $20,000.00 to be paid?

A. My understanding of the contract was that they were to pay $5,000.00 the first year.

333 Q. About when was that contract executed?

A. It was executed some time in the spring of 1880; I think in March, but it may have been as early as February.

Q. You say the Smuggler No. 2 was located in pursuance of that contract?

A. Yes, sir.

Q. What was done under that contract with reference to the Smuggler No. 2 location?

A. Well, we went and worked there; located the Smuggler 2 there and worked it, and Mr. Atchinson came over there and paid part of the men, and as soon as we got the location made and surveyed they took the surveys and all the pack animals—Dunscomb and Seever went out and took all the pack animals out and those surveys. The location was made before we struck any ore; we were in nothing but slides.

Q. When was that? Do you remember?

A. That was about June 1st, 1880; some time along about the first of June, I think.

Q. You had a location there?

A. Yes, sir.

Q. That is, you mean the location survey was made?

A. The location was made one day and the surveys were made out the following night, and they carried them out with them and put them on record when they went out for grub.

Q. What do you mean by location?

A. I mean by the location that the survey was made and the certificate was made out, and, of course, I had the location stake setting up for a long time before—1879; it was first put up and changed at different times when the 90 days expired.

Q. Was it called the Smuggler No. 2—the first one?

A. No, sir; Badger Boy.

Q. When did you set the location stake for Smuggler No. 2?

A. We located on the 12th of April; the stake was put up
334 some time in the spring.

Q. At the time your partners went away with the pack animals, etc., had they fulfilled the contract on their part as to the payment of moneys?

A. They hadn't fulfilled their contract up to that time, but I suppose they would do it. They had paid some little money—I don't know how much—they had paid in a little money, but they failed to get grub. When they went out they took away all the pack animals—nine or ten of them.

Q. Were there any debts against the claim at that time?

A. Yes, sir; there was some debts at that time.

Q. What amount?

A. I don't remember the exact amount, but I was working five men—either four or five—and Mr. Atchison had come in and paid me $75.00 or $80.00 and I divided that up among the men. I don't remember how much we did owe, but I know before they got back that we owed some seven, eight, or nine hundred dollars—nearly a thousand, I guess; of course, part of it was contracted before they went away and part afterwards.

Q. For what purpose did they go out?

A. To bring in grub.

Q. Where did they go?

A. They said they were going to Buena Vista, and I supposed they did, for I helped them up to a little town eight or nine miles above there.

Q. When did they come back?

A. I don't know; they hadn't come back when I left Aspen.

Q. When did you leave Aspen?

A. I left Aspen between the 5th and 10th of August.

Q. Of that year?

A. Yes, sir; 1880.

335 When did they leave Aspen?

A. They left there about the first of June. They left the next day after these surveys were made out.

Q. What was the understanding about their coming back when they left?

A. They said they would come up in ten days after they left.

Q. Did they leave you any instructions in respect to the work while they were gone?

A. No, sir; I had the management of the work myself.

Q. How many men were you working?

A. I think five at that time. I worked from four to six during the summer.

Q. Who was paying the men?

A. Well, the men hadn't been paid. They had received some money. Mr. Atchison gave me some money and I divided it among them. They never was paid in full until they were paid by Mr. Crittenden and Mr. Adair. In fact, Mr. White, here, has never been paid yet.

Q. Go on and state what you did on the Smuggler No. 2 ground and claim from the time that your partners, Atchison, Dunscomb, and Seever, I understand them to be, left Aspen, on or about the first of June, 1880.

A. Why, I went right along working the same as I had been before; bought my grub mostly of Mr. Crittendon at the grocery store there. At that time, I think, I contracted some little bills outside of Crittendon, and we worked right along to about the first of August, when we struck ore on the J. C. Johnston location, which was then the Smuggler 2. Mr. Crittendon, he came up and said that as the partners of mine hadn't come back—they had been two months, and he said he wanted his money and I didn't

336 have any. I had borrowed a little money of Wood and a man by the name of Louis—Miller I think his name was—to pay for a few little things that we had to get and pay cash for, and we kept the thing running until we struck this ore, and after we struck the ore Mr. Crittendon comes in and said he must have his money. I wanted him to get his money, of course. They hadn't come back and I didn't think they would ever come back.

Q. Had they ever sent you any word?

A. I got two or three letters that I wrote Dunscomb. He said he had sent some sacks of flour up to the divide and for me to send a man for it. When they went out Mr. Seevers was sick and got bad

on the road and they hired a team to take them over the range to Buena Vista, and they sent back the flour by the team. I don't remember now how many—two to four—half sacks.

Q. Did they send you any money to pay the men?

A. No, sir.

Q. Did you get this flour?

A. Yes, sir; I got it after a long time. I sent a man for it, and he went on to Buena Vista himself and didn't get back for eight or nine days.

Q. That brings it down to the first of August. You say that you think they were to furnish you the $5,000.00 the first year? How was that possible?

A. Well, it was. Of course, they were to pay the expenses of running these claims and developing them. They were to furnish grub and men and tools and powder and everything that was necessary to develop this mine.

Q. Who did the employing of the men?

A. I did.

Q. Entirely?

A. Yes, sir. Me and Mr. Rouse was to do that, and he left at Buena Vista and didn't go in there at all, and when we got to Buena Vista he fell out and would not go any further.

337 Q. What interest were you to have—what interest were each of the parties to have under the alleged grub-stake contract?

A. As I understand it, I was to have one-fourth, Mr. Rouse one-fourth, and the other parties one-half—Dunscomb, Atchison, and Seever.

Q. Then Rouse abaddoned, and what was the agreement then?

A. Only a verbal agreement between myself and these parties, that I was to go ahead and they were to pay me $75.00 a month and board and they would take the Rouse interest, and I told them that was satisfactory to me.

Q. You still retained your one-fourth?

A. Yes, sir.

Q. Now, at the time they went away, shortly after the location of the Smuggler, how much money had they put in under the contract, as near as you can tell?

A. Well, I don't know. I don't think it was understood what they had put in; don't think they put in more than five or six hundred dollars; they had bought these pack animals.

Q. There were some debts against the claim unpaid at that time?

A. When they went away; yes, sir.

Q. But you don't know exactly how much?

A. No, sir; I do not.

Q. I will ask you how that five or six hundred dollars was contributed.

A. Well, a portion of it was in the purchase of pack animals.

Q. How much of it?

A. Well, I cannot tell you. I bought two ponies here in Denver and paid $60.00 for one and $35.00 for the other, and I bought a

pony on the road going from here to Buena Vista and I think I paid $40.00 for it; when I got to Buena Vista I bought five burros, I think.

Q. Do you know what they cost you?

338 A. I don't remember, but I think we paid fifteen or twenty dollars apiece for them.

Q. What became of the animals?

A. When they went out they took all these animals with them, except that I think that they left an old horse that was pretty well used up. I also think they took my own pony and this man who went out for the flour brought it back.

Q. To what amount were they indebted, as near as you can remember, for wages to the men at the time they left Aspen?

A. Well, now, I could not say positively, Mr. Wilson; I don't remember exactly the time when we came in. They came in some time in May.

Q. Were they much in debt or a little?

A. Well, they could not have been a great deal, because we hadn't been working a great while. I think I had been working the mine about a month when they came. I could not say how many men I worked; until after they came in I worked three men.

Q. After they came in how many did you work?

A. I worked five, and I believe I worked six for awhile.

Q. How much were they indebted for the grub at the time they went out?

A. I don't know how much; probably wages and grub altogether, three hundred dollars.

Q. Who did they owe for grub?

A. They owed Crittenden for a portion of it, and I think they owed Wheeler for some.

Q. They went out to get grub?

A. Yes, sir.

Q. Did they go to get money, too?

A. Yes, sir.

Q. They didn't have any money there, then?

A. They didn't leave me any.

Q. Did you ask them for any?

A. Yes, sir; I told him I must have money, and a few days after that Mr. Atchison came in and gave me $75.00 to pay the

339 men, and he was to come in and pay up everything, but he didn't come in.

Q. Now, state fully the circumstances of the location of the J. C. Johnston claim.

A. After I had discovered ore, Mr. Crittenden—we owed him, I don't know how much—three or four or five hundred dollars. I don't know how much it was. The whole amount of indebtedness was about $1,000.00 to the men and everything. Mr. Crittendon came to me and said he would assume all the indebtedness, including his own. I told him I didn't know how I could get the money for him unless they came in and brought it, and he said to me, "I will assume all the indebtedness and pay off all the men if you will

locate this again—this Smuggler 2—and give me half of it, and I will give you so much money—$2,000.00, I think—besides pay you $100.00 a month, and pay you something down." Finally I concluded that I would do it, so as to pay the men off. I supposed these parties had abandoned their mine, at least they hadn't come in, and so I located the ground again, and Mr. Adair and Mr. Crittendon got one-half of it. The contract was made between Crittendon, Adair, and myself. Then they came out to Leadville.

Q. What was the extent of the work on the Smuggler No. 2?

A. I drove in a hole in the mountain ten feet with the mouth of it in slide. Then during the spring after we went over there we went and dug another ten-foot face in the mountain, and at the time the location was made I think we had the tunnel in fifteen or twenty feet.

Q. At the time of the location of the Smuggler?

A. Yes, sir.

Q. What was the work done at the time of the location of the J. C. Johnston?

340 A. This same tunnel was continued in about 72 feet and found the ore.

Q. And you cut the ledge, when?

A. I don't remember the date, but the location was made right away after the ore was found; it was within a few days. The ore was found some time before the location was made; probably three weeks.

Q. Before the making of the Johnston location?

A. Yes, sir.

Q. That you cut the ledge?

A. Yes; I found ore.

Q. And discovered the vein?

A. Discovered the vein. It was some time the first of July that the ore was found—that the vein was discovered. The vein was discovered before Mr. Atchison came in. This man that went out *which* these parties—Dunscombe & Seever—came back with a little batch of grub—$10.00 or $12.00 worth.

Q. Who was the man that went out with them?

A. His name was Josh. something. He must be over there yet.

Q. Do you remember his last name?

A. No; I do not.

Q. Now, I wish you would state, if you can, whether it was before or after he came back with the grub that you cut the Struck.

A. Found ore before he came back with the grub; before Atchison came in.

Q. When did Atchison come in?

A. He came in a few days after we struck the ore; some time in July.

Q. Did he come in before you located the J. C. Johnston?

A. Yes, sir; this time that he came and gave $75.00 or $80.00 when he came in.

Q. Did that pay the indebtedness at that time?

A. No, sir.

Q. How near did it come to it?

A. I could not say exactly, but there must have been three or four hundred dollars.

Q. How much were you owing Crittendon at that time?

341 A. I don't know; probably we may have owed Crittendon $300.00 at that time.

Q. Did Atchison know that?

A. Yes, sir.

Q. What did he say about paying the various debts?

A. He said he would send in the money in a few days or bring it in.

Q. And then went away?

A. Yes, sir.

Q. Where did he go?

A. I don't know. He went on horseback and didn't come back any more.

Q. When did you next see Mr. Atchison?

A. In Leadville, in August.

Q. What happened then?

A. That was after the J. C. Johnston location, and he came in and bought out Mr. Crittenden and Mr. Adair and paid them their money and made an agreement with me and Mr. White there that he would come to my house on the next Saturday and pay me $500.00 and Mr. White what he owed him. He had a deed already made out then—a quitclaim deed—that he wanted me to sign, and I would not do it until I got my money.

Q. Did he at that time find any fault with your locating the Johnston claim?

A. No, sir.

—. Did he claim that there was any bad faith on your part in locating it?

A. No, sir; Mr. Atchison told me that I had done just right.

Q. I understood you to say this morning that Atchison threatened some action or suit against you?

A. That was before we made the compromise. He threatened to bring suit against me before we settled it—before he bought out Crittenden and Adair—but he told me I had done just right

342 afterwards. It was before he bought out Crittenden and Adair that he threatened these court proceedings.

Q. That was at Leadville you had that talk?

A. Yes, sir; at Leadville.

Q. He was to pay you $500.00, you say?

A. I think the agreement was $525.00, and he paid me something. I don't know whether $25.00 or less.

Q. Did he pay you over $25.00?

A. No; he didn't pay me over that, but I think he paid me $25.00.

Q. What did that $525.00 represent?

A. That was my wages from the first of April—from the time I left here up to that time—and my expenses home and back and to satisfy me for my trouble and expense coming down.

Q. Now, you said this morning that Thompson and Sayr were to receive one-eight- for defending this threatened suit. Was that one-eighth made over to them in any shape at that time—that one-eighth interest?

A. No, sir; it was deeded to Mr. Chatfield, with the understanding that when they performed *the* those services he was to deed it over to them.

Q. Was that understanding put in writing?

A. It was my impression that it was.

Q. Give us your best recollection about that.

A. I know it was all talked over between Thompson & Sayr and Chatfield, and the understanding was that if it wasn't put in writing then it was to be. I think it was written out right there. Dan. Sayr was writing there a long time—writing deeds, etc.—and finally I signed everything, and I am under the impression that
343 Mr. Chatfield and Thompson & Sayr signed a contract between themselves. That is the way I understood it, at least.

Q. I will ask you whether you executed any of the papers at the time you signed and executed this deed to Chatfield at Leadville on the 12th day of October, 1880.

A. Yes, sir.

Q. What paper?

A. I also executed a deed to Thompson & Sayr, my attorneys, for an undivided one-fourth interest of the Smuggler No. 2 location.

Q. Look at that paper and see if that is a copy of the deed (handing witness paper).

A. I guess probably that is a copy of it, only this is for the entire Smuggler lode.

Q. Did you receive any consideration for the making of that deed?

A. No, sir.

Q. Any money consideration?

A. No, sir.

Q. And the actual consideration, I understand, was the employment of Thompson & Sayr as your attorneys to defend any suit against the J. C. Johnston claim?

A. Yes, sir; the consideration of that deed was—I made that deed—to secure Thompson and Sayr and Chatfield. Chatfield had purchased from me a one-fourth interest of the J. C. Johnston lode, and the understanding was if they perfected the title of the J. C. Johnston and get a patent I was to have an undivided one-eighth interest back. Thompson and Sayer were to have an undivided eighth and Chatfield one-fourth interest, if that could be accomplished, if we got beat in this contemplated lawsuit or the one they claimed was already progressing, and it went back to the original location, the Smuggler 2. Then, of course, I didn't have any
344 interest left, but if it was patented as the J. C. Johnston I was entitled to an undivided one-eighth.

Q. Now let me call your attention to the fact in this contract

which makes no reference to any suit pending at that time, but which uses this language: "That in the event of the party of the first part prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part against persons claiming adversely to him an interest in the following-described property, etc., the party of the first part, upon so acquiring the legal and equitable title to the said mine by means of the legal proceedings so about to be commenced, doth hereby covenant and agree, etc."

A. Well, that contract was written, of course, after all this conversation between Chatfield and I. Chatfield, of course, told me in the first place that a suit had been commenced—there was a suit then—and that he would not let me have the team or pay me any more money unless I would employ counsel to defend it.

Q. Now, did you communicate to Chatfield and to Thompson & Sayer the facts that you have related here in regard to the location of the Smuggler No. 2 and the subsequent location of the J. C. Johnston and your relation to your former partners, Dunscomb, Atchison, and Seaver?

A. I told them all about it, and in fact they seemed to know all about it already. I told them all about the whole proceedings, and how I located it originally, and how I located it the second time, and told Chatfield and Thompson & Sayer everything about it.

Q. Did you tell them of the transaction in August between
345 you and Atchison and between Atchison, Crittenden, and Adair?

A. Yes, sir; and Mr. Chatfield said he could get the other half interest out of Crittenden and Adair, and I told him they had deeded it to Atchison. "Well," he says, "that won't matter, I can get the title and have it put on record—they hav'n't had their deed recorded yet; I can get them to deed it to me and get my deed on record ahead of theirs."

Q. Did you at the time of signing this contract with Chatfield expect any lawsuit from a claimant of the Smuggler No. 2?

A. Yes, sir; I expected a suit then certainly; in fact I thought there was a suit commenced. I was under that impression from the talk with Thompson & Sayer and Chatfield and from what they told me. I know that Thompson told me I had got into a suit and that I had got in with a set of damn thieves; that he was well acquainted with them.

Q. But your expectations in that regard were because of what was told you by Thompson & Sayer and Chatfield?

A. Yes, sir; I hadn't seen any notice of suit or had any notice of a suit served on me.

Q. Had you ever had any conversation or communication with Atchison with regard to the payment of that $500 since his promise to pay it?

A. Yes, sir.

Q. When and what was it?

A. I had a letter from him a few days after he was at my house

at Kansas City; I think he was stating that he would be at my house a certain day, I forget now how long, but a few days anyway. I waited and he didn't come. Mr. Chatfield had been funning me a couple of days before this to buy this interest, but I told him I had a letter from Mr. Atchison and that he stated he would be at
346 my house in a few days and fix it up, but that if he didn't come I would sell to him.

Q. Can you fix the date about?

A. Well, it was some time in August; I can't fix the day.

Q. And you made that agreement to sell to Chatfield in Sept., wasn't it?

A. Yes, sir; some time in September I think it was.

Q. Was there anything said between yourself and Chatfield and Thompson & Sayer at the time of the execution of these papers about the patenting of the Johnston mine?

A. Yes, sir.

Q. What was said?

A. Chatfield agreed with me there that he would have the claim patented and pay every expense, and also we were talking about forming a company and stocking it. We agreed to have the claim patented and perfect the title of the J. C. Johnston and have it patented, and he agreed then to give me back my one-eighth interest either in stock or Mr. Chatfield would deed it back to me after it was patented and title perfected. Thompson & Sayer was to defend all suits and litigations for their one-eighth interest I had deeded to Chatfield, and they wanted me also to deed the whole interest to Chatfield. I was talking of going away to Wood River and the proposition was I might deed it to some one here and leave it in some one's hands, and so Mr. Thompson & Sayer suggested that I deed it to Chatfield, and I told them I would just as soon as not if it would save any trouble, and I said, "After the title is perfected I will have my one-eighth back, and if we lose the case I will have nothing."

Q. What was the idea of making the deed to Thompson & Sayer of the Smuggler?

A. To protect Thompson & Sayer and Chatfield.

347 Q. In case the Johnston title failed that would make the Smuggler title good?

A. Yes, sir. I deeded that interest over to Thompson & Sayer, and the understanding was that Chatfield and Wilson was to have that interest. Of course, I didn't have any conversation with Wilson, but Mr. Chatfield said that it was deeded for himself and Wilson.

Q. Did Wilson pay any part of this $1,200?

A. Didn't pay it to me.

Q. Did he pay it to Chatfield?

A. That I don't know. Mr. Chatfield paid me the money.

Q. Did Dunscomb have anything to do with his transaction?

A. No, sir.

Q. Did he know anything about it?

A. That I could not say.

Q. Do you know when the title to the Johnston claim was perfected, as a matter of fact, by the procuring of the patent?

A. The first knowledge I had of it was a letter that Mr. Northrup got from Leadville.

Q. About when did that knowledge come to you?

A. That was some time during the summer of 1885—spring or summer.

Q. What did you do then?

A. I made Mr. Chatfield sign that written —. Chatfield had met me two or three days previous to this—he always told me that the title was not perfected before this. I met him here one day and told him I understood that the claim was patented and I wanted my interest. We had quite a long talk and he proposed that we go to Leadville and get Thompson & Sayer and get it fixed up. I told him I had no money to pay fare to Leadville and I looked to him for my interest; that he held it and I looked to him, and
348 finally he insisted that I would go and I told him I would not, and that I would not leave it to Thompson & Sayer. He then claimed there was thirty-five or thirty-six hundred dollars that I owed him for development work, and finally he said that if there was anything coming to me I had better go to the courts and get it.

Q. What was the fact about the development work?

A. I was over there in 1880—I went over there and I was afterwards there after that. Well, they had drove the long tunnel probably 150 feet in further than it was in when I left there.

Q. Was it or not the understanding that so long as the title remained in Chatfield and not perfected that there was to be any expense to you for development?

A. There should be no expense to me for development work for a year after; that was the verbal understanding, but the contract does not call for that. There was to be no expense attached to me for a year after the patent was issued and after the title was perfected.

Q. Was there anything said about the probability as to the time when the patent would be procured?

A. Yes; we thought it would take about a year or a year and a half to get the patent; they were to push it right ahead.

Q. Did you know anything about the incorporation of the Fulton Mining Company?

A. There was no name—we didn't name any Fulton Mining Company—they had talked among themselves about organizing a company, but I didn't know anything about the name of it and didn't hear anything about it until I got back from Wood River, in 1883.

Q. When did you go to Wood River?

A. I went to Wood River in 1882—in March, 1882, I think.
349 I went to Aspen in 1881; went to Leadville and went to Thompson & Sayer's office and asked how the case was and he said it was compromised, and I told him I would like to take the papers to copy them, and he gave them to me and I took the papers and looked them over and went down to have them copied, but found out it would cost too much and so didn't do it.

Q. What papers?

A. Contract between Chatfield and I, Crittenden, Adair, and I, and a copy of the original grub-stake contract between Dunscomb, Seaver, and I. I supposed there was a contract between Chatfield and Thompson & Sayer, and I wanted to copy that more than anything else. I don't think that was among the papers.

Q. Do you know anything about the bringing of any suits in the U. S. courts in the spring of 1881 by the claimants of the Smuggler No. 2 against the Johnston location?

A. No, sir; not until 1885.

Q. How did you learn about that?

A. I learned it from Judge Northrup, my attorney.

Q. When did you learn?

A. It was some time during the spring of 1885. I didn't learn then when the suit was pending.

Q. Were those suits brought, to your knowledge?

A. No, sir; this second suit I have learned of since you have been in the case. I never learned of it before.

Q. Were the suits compromised and dismissed, and if they were compromised and dismissed was it with your consent and knowledge?

A. No, sir; they were not.

Q. Were you ever notified by Thompson & Sayer or Chatfield to furnish any evidence or witnesses in those suits or in
350 any suits between the Smuggler No. 2 and the Johnston?

A. No, sir.

Q. Were you accessible in May and April, 1881, so that Chatfield or Thompson & Sayer could have communicated with you?

A. I was in Thompson & Sayer's office in 1881. I was working for Chatfield in 1881, on a subcontract for him.

Q. Was it in May, 1881, in Thompson & Sayer's office, that Thompson told you the suit was compromised?

A. Yes, sir.

Q. How long had you known Chatfield prior to the fall of 1881, when you had this business with him?

A. I moved out here in 1873, and got acquainted with him soon after, within a very short time.

Q. Where had you known him?

A. I knew him at Littleton; he lived on a ranch above Littleton, and afterwards lived in Littleton several years.

Q. How intimate was your acquaintanee?

A. As intimate as men could be, especially his family and mine. They were both from Missouri; his wife was a Missourian and we were from Missouri, and our family were quite intimate. I always thought very well of him before this except on this railroad contract, on which he owes me a little balance.

Q. I will ask you whether or not he had your confidence.

A. Yes, sir; he had. I would as soon trust Chatfield as well as any man I was acquainted with up to that time.

Q. Now, from the time of the original contract with Chatfield and

Thompson & Sayer what interviews did you have with Chatfield, and what was said during the interviews respecting this business?

A. Why, several times in 1881, when I was working for
351 Chatfield, I inquired about the suit and the proceedings under the J. C. Johnston location, and he told me it was not consummated; that the patent hadn't issued, and then I would see him for some time frequently and then I didn't see him after that until I returned from Wood River, in 1883. I met him and inquired of the suit and if the patent wasn't issued, and he always told me that as soon as the patent was issued I would get my interest. I saw him probably two or three times between that and 1885.

Q. When did you learn and how did you learn that the patent had issued?

A. I learned it through Judge Northrup after I had employed Northrup, after having this talk with Chatfield on the street here, when he told me I would have to go to the courts to get any interest I might have.

Q. After that interview with Chatfield and his referring you to Thompson & Sayer you learned that the patent was issued?

A. Yes, sir; he told me the spring before that he was buying horses and going to Aspen, and that the patent wasn't issued.

Q. Then what steps did you take to recover your interest in the property?

A. I went to Judge Northrup and entered into an agreement with him to prosecute the case for me and I was to pay the costs.

Q. What did he do?

A. He went to Leadville and saw Thompson & Sayer and tried to get this contract to make a copy of, and finally wrote out the bill and filed it in the United States district court.

Q. Do you know what became of that case?

A. I think it was either dismissed or withdrawn. The Fulton Mining Company demurred and I came down to hear the argument. Hallett intimated or it was understood that Northrup would
352 dismiss the case and bring it at Leadville.

Q. Was it brought there?

A. Yes, sir.

Q. By Northrup?

A. Yes, sir.

Q. Do you know what became of that case?

A. I understood the summons was quashed in some manner.

Q. Then you brought this present action?

A. Yes, sir; this case was brought, as I understand it, over at Aspen and transferred here.

Q. I will ask you whether you had any conversation with your other partners, Dunscomb and Seaver, respecting the merits of the location of Smuggler No. 2 and the Johnston after the location of the Johnston.

A. The only communication or talk I ever had was with Mr. Atchison at Leadville. I have written to Dunscomb a letter or two since, but I don't think I have mentioned the location.

Q. Did they ever claim from you an interest in the Johnston location?

A. No, sir.

Q. Have they ever claimed to you that the Johnston location was in fraud of the Smuggler No. 2?

A. No, sir; Mr. Atchison claimed before he made this compromise between Crittenden, Adair, and himself in Leadville and he threatened suit, and after that was settled up between himself and Crittenden and Adair and he told me then that I had done just right.

Q. Did he claim to you that Johnston location was in fraud of the Smuggler No. 2?

A. No, sir.

Q. State anything about that at the time he made the compromise with you.

A. No, sir; not after he fixed up with Crittenden and
353 Adair. After that I talked with him several times and he said I had done right. When he wanted to fix it up with me he had a blank quitclaim deed in his pocket, and he wanted me to sign it and I told him I would not sign it until I got my price, and he told me there that I had done just right, and I said it was the only way I had to get out of it and paying those debts and paying the men.

Q. Do you know the location of the Chatfield claim with respect to the J. C. Johnston; how it lies?

A. Well, it is a fractional claim. It lies probably down opposite of the center of the Johnston lode. I think it is a hundred and some feet wide; I don't know exactly, but it is less than two hundred.

Q. It is correctly represented on that plat (handing witness plat)?

A. I think it is probably correctly shown, but the Smuggler No. 2 location isn't correct. The Smuggler location lacked about ten or twelve feet of coming to the line of the Chatfield. It was called the Kansas City then. It is probably about right; but if that map is correct the J. C. Johnston was not located on the Smuggler ground exactly.

Q. Does the Chatfield location adjoin the Johnston location?

A. Yes, sir.

Q. Do you know when the Chatfield as the Chatfield was located?

A. No, sir. Chatfield told me some time afterwards that he had relocated the Kansas City as the Chatfield.

Q. Are the two locations of the same vein, the Chatfield and the Johnston?

A. No, sir.

Q. Was not on the same vein?

A. No, sir—that is, as far as I developed and worked the Johnston lode. The apex of the Johnston lode is upon the John-
354 ston. I don't believe it would be possible to turn to the Chatfield ground without making a terrible jog. I mean the Chatfield has not the apex.

Q. Do you think the Johnston vein extends into the Chatfield ground?

A. Yes, sir.

Q. I will ask you how the vein dips—from the Johnston or under the Johnston.

A. Well, it don't dip. The dip of the vein wasn't forty-five; probably it was less, but I don't know exactly how much less.

Q. Did it dip under the Chatfield?

A. Yes, sir; right under the Chatfield.

Q. The Johnston is located higher up on the mountain?

A. Yes, sir; and the Chatfield is under it.

Q. Did you discover the apex of the vein of the Johnston?

A. Yes, sir; I think I did.

Q. Do you know whether Atchison when he purchased the Crittenden and Adair interest and when he agreed to purchase your interest or half of your interest of the Johnston location represented his former partners, Seaver and Dunscomb?

A. That was my understanding, that he did. He talked and acted that way; talked as though he was acting for them, and I supposed he was. I knew Mr. Atchison had a power of attorney from the whole of us in the first place.

Q. Do you know a man by the name of W. C. Oberne?

A. No, sir.

Q. Do you know a man by the name of O. H. Dean?

A. No, sir.

Q. Ever hear of any claims made by them or either of them to an interest in the Smuggler No. 2?

A. No, sir; I knew of these lawsuits, and they may have been named as one of the parties to the suits. That was in 1885. Their names may have appeared, but I don't know them.

355 Q. Do you know a man by the name of Ed. F. Brown?

A. No, sir; I don't know him; I have heard of him.

Q. Did he ever make any claim to you for any interest in the Smuggler No. 2?

A. No, sir.

Q. Or the J. C. Johnston?

A. No, sir; never saw the man in my life.

Q. Did you say, Mr. Johnston, that Chatfield knew of the purchase by Atchison from Crittenden and Adair of their half interest of the Johnston claim at the time of your making the title bond to Chatfield?

A. Yes, sir; I told him so—that is, he knew it as far as I told him; I think he knew it before.

Q. Did you know that Crittenden and Adair afterwards made a conveyance of that same interest to the Fulton Company?

A. I knew it in 1885 when we got a transcript of the conveyance; Chatfield told me at this time that he could get this deed from Crittenden and Adair.

Q. How did he explain that he would get a deed of the same interest from the same parties for a second time?

A. He told me that he could get this; that this deed they had

made to Mr. Atchison was not on record, Crittenden was then in Leadville, and that he could get a deed from them again. I told him about the deed to Atchison from them.

Q. What did he say he would do with the deed when he got it?

A. Nothing was said about that.

Q. Did he say anything about deeding it to the company?

A. Of course the organizing of the company was talked over, and we were talking about it; if Dunscomb, Seaver, and Atchison would not put in their interest if we organized the company—put in their interest they had purchased from Crittenden and Adair—

356 and this was all talked about.

Q. Was it his idea to beat them out of their interest in that way?

A. I don't know.

Q. Had they been invited to join the stock company?

A. Not that I know of.

Q. Were they asked by Chatfield or anybody to go into the stock company?

A. I don't know whether they had or not.

Q. Where was Seaver and Dunscomb at the time of your transaction with Atchison in August, 1880?

A. I don't know where Seaver was; Dunscomb was at Buena Vista, or supposed to be there.

Q. Where were they at the time of the location of the Smuggler No. 2?

A. I don't know that; but I suppose that they were at Buena Vista; Dunscomb, at least.

Q. Were they not at Aspen at any time while you were working and locating the Smuggler No. 2?

A. Yes, sir; Dunscomb and Seaver were there awhile and Atchison came there afterwards.

Q. Were they on the claim at the time of its location?

A. Yes, sir; Seaver was.

Q. Did they see the workings?

A. Yes, sir.

Q. Did they see after this whether there was any valid discovery or not?

A. Yes, sir; I told them when they made the location that it was not a valid location.

Q. What did they say to that?

A. They said they thought it would be all right, that we would continue to work it and continue in possession of it.

Q. When you had this talk about the stock company with Chatfield, did Thompson & Sayer take any part in the conversation?

A. Yes, sir.

357 Q. Was there anything said about who should compose the stock company?

A. Well, of course the understanding—the talk—was that if Chatfield got this deed from Crittenden and Adair that Chatfield, Thompson, Sayer, and myself would be the stock company.

Q. Anything said about Wilson?

A. Yes, sir; Wilson.

Q. Anything said about Dunscombe?

A. No, sir; nothing said about Dunscombe.

Q. Do you know whether Dunscomb is related to Thompson?

A. I learned afterwards that he was a brother-in-law of Thompson's; didn't know it at that time.

Q. Was there anything said or agreed upon as to what should become of the interest—the one-eighth interest—Thompson & Sayer were to have for their services in case their services were not necessary?

A. It was to revert back to me. They wanted me to deed the whole to them and I would not do that, and I deeded to Chatfield with the understanding that *if* this suit was pending or brought and they defended it they were, of course, to get their one-eighth interest.

Q. Was there any written agreement or declaration made by Chatfield to show what interest Thompson & Sayer had?

A. Well, my understanding was that there was a written agreement drawn out at the same time these other papers were drawn up between Thompson & Sayer and Chatfield, showing what they were to get.

Q. Were there any other papers signed besides the papers you signed that day?

A. Well, Cahtfield signed that contract and I don't know
358 whether there were any other papers signed or not. If there was a contract signed between Chatfield and Thompson & Sayer all those papers were to go on record. We talked of contracts between them and they said it was not necessary, that the papers would all go on record, anyway.

Q. Were Thompson & Sayer present and did they participate in all the conversation between you and Chatfield in regard to the Smuggler No. 2 and the J. C. Johnston transaction?

A. Yes, sir; it was all talked over among us and they heard what was said, and then we talked about organizing a company; they were both present all the time. Dan. Sayer drew up all the papers, and when they were finished I looked them over and this contract. I spoke of the last clause in it and Thompson said, "Yes; that ain't right;" and picked up a pen and erased it.

Q. What was your objection to the last clause?

A. The last clause of the contract I considered, if I signed it, it would cut me out entirely of my interest, and if that was erased I would still have Chatfield bound for a one-eighth in case a patent was obtained for the Johnston lode; and Thompson said I was right, and took up his pen and erased it.

Q. Thompson said that?

A. Yes, sir; I was mistaken about the number of lines erased. I thought there was two and a half or three and a half, but I see there is five or six.

Q. Do you know what has been done on the J. C. Johnston in the way of mining since the fall of 1880?

A. No, sir; I was there in 1881—the spring of 1881, think it was the latter part of May—and the long tunnel I started there—I don't

remember how far we had run it—that was run and cut the ledge; I was in the tunnel and in the ledge.

Q. Does that plat correctly show the tunnel?

A. Well, very nearly.

359 Q. I will ask you whether or not, to your knowledge, there are workings between the Johnston and the Chatfield showing a continuous vein from the Johnston into the Chatfield.

A. Well, as I told you, in this 72-foot tunnel on the hill above the long tunnel, that cuts the ledge, and I sunk a shaft from that tunnel—I don't remember, probably forty-five or fifty feet—and then started this long tunnel and drove it in a portion of the way until it cut the ledge. When I left there there was no connection between that and the Chatfield. There was in 1881, when I was there.

Q. What induced you to employ Thompson & Sayer in this matter?

A. It was Mr. Chatfield's influence that induced me to go there. I had never seen Mr. Thompson—I had heard of Dan. Sayer, but didn't know him—and he recommended them as lawyers, and said they were as good attorneys as in the State, and said they were strictly honest and honorable.

JOHN C. JOHNSTON.

Subscribed and sworn to before me this 8th day of October, A. D. 1888.

JOHN W. WEBSTER,
Master in Chancery.

It is agreed that the cross-examining of this witness shall be had at the convenience of Mr. Thompson after the direct examination is extended by the stenographer.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel, continued until April 11th for further examination & cross-examination.

JOHN W. WEBSTER, *Examiner.*

360 Complainant thereupon produced JOHN H. WHITE, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, testified as follows:

Direct examination by Mr. WILSON:

Q. Where do you live?
A. Littleton.
Q. What is your business?
A. Well, at present, I am road overseer out there.
Q. Where were you in the spring and summer of 1880?
A. Well, in the spring I was at Manitou awhile.
Q. Where were you in the summer?
A. I went to Aspen.

Q. Do you know J. C. Johnston, the complainant in this case?
A. Yes, sir.
Q. How long have you known him?
A. Eight or nine years.
Q. Did you do any work for him during the summer of 1880?
A. Yes, sir.
Q. What kind of work was it?
A. Mining.
Q. Whereabouts?
A. Aspen.
Q. And in what mine or claim?
A. Smuggler 2.
Q. How long did you work for him?
A. Well, some time—somewhere about two months or two and a half.
Q. Did you know or did you meet at that time Mr. Acheson, Mr. Seaver, and Mr. Dunscomb?
A. Yes, sir; I met Mr. Acheson, but I never saw the other two men.
Q. Did Mr. Acheson have anything to do with the development work on that claim, the Smuggler No. 2?
A. Yes, sir.
Q. What did he have to do with it?
A. Well, he was there when I first went there; they were all there, but I didn't see them when they went out the next
361 day; I went to work for Mr. Johnston or for the company. After I had worked awhile he came back, I think in about a month; after I had been at work about a month.
Q. Were there other men working with you?
A. Yes, sir.
Q. How many?
A. There were about four or five.
Q. Do you remember who they were?
A. Yes, sir, but I don't remember the names of all of them.
Q. Give the names of those you remember.
A. Charley Kelly, that man Louis, and I don't know whether his other name is Miller or not; would not be positive about his other name; a man by the name of Josh., I don't remember his last name, and Mr. Johnson was at work. There was two other men. I don't know their first or last names.
Q. Do you remember what wages you were getting?
A. Yes, sir.
Q. What were they?
A. Four dollars a shift.
Q. Who paid the wages?
A. Well, I never got them paid. Mr. Acheson paid me a hundred dollars.
Q. Where did he pay you that?
A. Leadville.
Q. Did you receive any wages at Aspen?
A. No, sir; I don't think I did.

Q. How long did you work in the mine?

A. Well, I could not state exactly how many days I did work, because I haven't the account or book or anything—it is so long standing—but when we settled up my wages were $150.

Q. At four dollars per day?

A. That was the agreement. I didn't work all the time I was there.

Q. When was it that Mr. Acheson paid you this hundred dollars?

A. It was in 1880.

362 Q. What was said about the payment of the other fifty?

A. Well, they was going to pay me nothing on the start.

Q. Why not?

A. They made a kind of kick, and it was a place they could not very well get out of and they gave me a hundred dollars, and agreed to pay the other at Littleton—agreed to meet me at Mr. Johnston's house and pay me the balance in a very few days.

Q. What was the objection?

A. He wanted to stand me off for a few days.

Q. Didn't deny it?

A. No, sir; didn't deny it—the wages, or account, or anything.

Q. Do you know Crittenden and Adair?

A. Yes, sir.

Q. Were you present at the transaction between Acheson, Crittenden, and Adair?

A. No, sir.

Q. Did you hear any conversation between Acheson and Johnston with reference to the purchase of a part of Johnston's interest in the Johnston claim?

A. Well, they had some talk; I don't remember the words.

Q. Do you remember the substance of it?

A. He agreed to settle up everything; pay up all bills, I believe, and pay off all the men.

Q. What did Johnston agree to do?

A. I can't tell the story and commence in the middle of it.

Q. Tell it all and commence at the beginning; that is just what we want.

A. I went to work on the Smuggler 2 and worked there awhile. I was there when they relocated the J. C. Johnston and helped to survey it. I was working for wages, and could not get my money.

363 When Johnston made the contract with these other men I didn't know what it was they was going to do. They was to go out to Leadville and pay me my money and then I could go home or anywhere I pleased, and so when I got to Leadville this money was due me and Acheson turned up—I don't know where he came from—and they had quite a wrangle, all of them, and finally they settled it—I don't know how, except this much: I was to get my money. He was to pay the bills and pay the men—Acheson was—and of course I was satisfied if I could get my money. A good deal of this talk was up in the room. After we went down-stairs he wasn't going to pay me my money and I waited around awhile and saw it was all talk and no money, and I said I must have the money,

and he talked around and finally paid me $100.00, and he agreed to pay the other fifty at a certain time—within a very few days. At that time I lived at Colorado Springs and then moved to Littleton.

Q. Was this at the hotel in Leadville?

A. Yes, sir.

Q. What hotel?

A. I could not tell you the name. I think it was the Windsor hotel—about the finest hotel in Leadville. I have never seen him since.

Q. Do you remember what he agreed to pay Mr. Johnston?

A. I could not say positively.

Q. Do you know whether he paid him anything?

A. I think he paid him twenty-five or thirty dollars; something of that kind.

Q. I will ask you whether there was any discovery of mineral in rock in place in the Smuggler No. 2 claim.

A. Well, I am not much of a judge of mines or mining, but there was mineral there.

Q. When was that discovered?

A. It was made somewhere about the 4th of July, 1880, or just before.

364 —. Do you remember when it was that Acheson left Aspen and went away?

A. The first time?

Q. The first time.

A. He left there the day after I got there. I got there on Sunday and he left Monday.

Q. What month was it?

A. It was, I think, June—about the first of June. I went to work the next day.

Q. You didn't see Acheson after that, did you?

A. No; not to my recollection. I may have seen him.

Q. Now, when did he come back? Do you know?

A. Some time about the 4th of July or a little afterwards; about the 5th or maybe the 6th or thereabouts of July.

Q. What did he do about the mining claim then?

A. Well, he came there and paid some money; didn't pay me any; probably left some money with Mr. Johnson, and he paid it to some of the men; ten or fifteen or twenty dollars apiece.

Q. Do you know how much was owing at that time—how much was owing to you?

A. For a month's work.

Q. Same amount owing to the others?

A. I was a new man. I think all the men he owed a great deal more to than he did to me. The others were working there when I went to work. I was a new man.

Q. Did he bring any supplies in with him that time, or don't you know?

A. I think there was a man came with a couple of pack animals and brought in a small amount of grub just a day or two before he came.

Q. How long did he stay that time?

A. Just over night, I think. He came some time in the afternoon and I think he went away the next day.

Q. Do you know where he went?

365 A. I don't know. I think he went back to Buena Vista.

Q. Did he say anything about coming back that time?

A. I don't remember that he did. I don't think I talked with him to amount to anything.

Q. Have you ever received that fifty dollars balance?

A. No, sir; I have had the promise of it a few times by Mr. Chatfield, but I never got any of it. I started to go over there once and got as far as Leadville and came back.

Q. Did you ever furnish any money to Johnston or any one for the use of the Smuggler No. 2?

A. Yes, sir; I let Mr. Johnston have ten dollars to buy a wheelbarrow, I believe.

Q. When was that?

A. I think I had been working there about two weeks and maybe longer.

Q. Was that ever paid?

A. No, sir.

Q. Is it included in this one hundred and fifty dollars?

A. I don't think it was; I don't think it was mentioned; I didn't think of it at the time; I am mighty glad to get what I did get.

Q. Do you know what Acheson and his partners were owing to Johnston at the time Acheson paid you this hundred dollars?

A. Well, I heard Johnston say that they owed him four or five hundred dollars for work.

Q. Did you hear him say it at that time?

A. I heard him say that coming home or after we got home; I don't remember that he said — at that time. I know we used to watch the trains for him. I came right home and moved right up to Littleton.

Q. Did you hear Acheson agree to pay that money, whatever it was, to Johnston?

A. Yes, sir.

366 Q. He said he would pay it when he paid you?

A. Yes, sir; he agreed to come to Littleton and settle the bills. I don't know how much it was; but I think it was four or five hundred dollars.

Q. Have you ever seen or heard from Acheson since that time?

A. No, sir; except through Mr. Johnston. He said that he had a letter or something of that kind.

Q. Did you know Dunscombe or Seaver?

A. No, sir; I don't think I ever seen either one of them; I may have seen them, but not to know them.

By consent of counsel the further taking of testimony in this case is hereby adjourned until Wednesday, the 11th day of April, 1888.

JOHN W. WEBSTER, *Examiner.*

WEDNESDAY, *April 11th, A. D.* 1888.

JOHN C. JOHNSTON, recalled in his own behalf, on further direct examination by Mr. WILSON testified as follows:

Q. I want to ask you, Mr. Johnston, whether the deed which you made in October, 1880, conveying your interest in the J. C. Johnston claim was made in pursuance of the title bond formerly executed by you or whether it was made as a separate and independent transaction.

A. A portion of the deed was made in pursuance of the title bond.

Q. What portion?

A. A one-fourth interest of the J. C. Johnston. The re-
367 maining one-fourth interest was deeded to secure Thompson & Sayer in defending the title for me to the J. C. Johnston, and the title of the other one-eighth interest was to be returned to me by Chatfield or the company.

Q. How does it happen then that in making the deed or rather that in making the title bond of the J. C. Johnston there were a number of other properties included?

A. I sold Chatfield one undivided half interest in these other properties included in there at the same time that I sold him this interest in the J. C. Johnston.

Q. Did the same deed include those properties?

A. No, sir; Mr. Chatfield told me that he didn't want the other property.

Q. It appears by the title bond that there were several other properties included within that bond besides the J. C. Johnston which you did not afterwards convey by the mining deed to Chatfield. Now, how does it happen that these properties were not included in the deed of the quarter interest in pursuance to the title bond? Do you understand the question?

A. Yes; I think I do. The interest referred to in that title bond Mr. Chatfield didn't seem to want and said that he didn't want a deed of those interests.

Q. So they were just dropped?

A. Yes, sir; just dropped.

Q. Now, what was the purpose of the conveyance at the same time of all your interest in the Smuggler 2 to Thompson & Sayer?

A. The purpose of my conveying that interest was to protect Mr. Chatfield and Mr. Wilson in case the location of the J. C. Johnston was null and void, and it returned to the original location, so they might have a one-fourth interest in the property that they had bought from me, even if the Smuggler location was good.

368 Q. Now, have you ever had any conversation with Mr. Thompson and Mr. Sayer concerning your claim against Chatfield and them or their grantees for this interest you are now sueing for?

A. I was present with my attorney, Mr. Northrup, one day here in Denver when they had a conversation—Northrup and Thompson. It was during the summer or fall of 1885, I think. Mr. Northrup told me that Mr. Thompson had said to him——

Mr. THOMPSON: I object to anything that Northrup told you. You may state what Mr. Thompson said. Anything that I said I will stand by.

A. It was here in Denver.

Q. You may state the conversation.

A. Mr. Thompson stated that if Mr. Northrup would withdraw his proceedings against the Fulton Company and proceed against Chatfield and Wilson that he thought he could assist us in procuring from Mr. Chatfield what I was entitled to. He also said that Chatfield was a rascal, and that he knew that Chatfield *he* swindled me out of my interest, and Mr. Northrup and I had a little consultation, and we finally concluded that we would submit the matter to Mr. Thompson, and if he would agree to prosecute the case as counsel that we might accept it, and Mr. Thompson said he would have to think over and consider the proposition, and Mr. Northrup told me afterwards that he would not accept.

Q. Was there anything said about the interest that Thompson & Sayer were to have for their services?

A. No, sir; nothing that I know anything about.

Cross-examination by Mr. THOMPSON:

Q. Mr. Johnston, where was this grub-stake contract made?

369 A. It was made at the American house—no, the Grand Central hotel.

Q. I mean what town?

A. It was made in the city of Denver.

Q. Who drew the contract?

A. Well, I think Mr. Acheson drew up the contract in writing and I think Dunscomb copied it afterwards.

Q. Who was present when it was written?

A. Myself, Mr. Rouze, Dr. Dunscomb, Seaver, and Acheson. They were there in the room the most of the time together.

Q. Where is Mr. Rouze now?

A. That I could not tell you, Mr. Thompson. I hav'n't heard from Mr. Rouze for several years.

Q. How long after that contract was drawn did you go over to Aspen?

A. I went over to Aspen within a few days afterwards; could not state exactly, but within a week or ten days about.

Q. When did Mr. Rouze notify you that he dropped out of the contract?

A. Mr. Seaver and I went over there, and when we got to Buena Vista Rouze dropped out. I went over to Aspen and set up stakes on this ground that I had located the fall before.

Q. This was after the contract was made?

A. Yes.

Q. Did Rouze go with you at that time?

A. No, sir.

Q. The question was, when did he notify you that he dropped out?

A. It was some time during the fore part of April, at Buena Vista. Mr. Rouze had some claims or interests in south Arkansas, I think, and I understood they were to pay him some money at Buena Vista, and when they got there they had a falling out, and my understanding was they didn't pay the money and Mr. Rouze quit.

Q. Where did you get that understanding from?

A. I got the understanding from—I can't remember the talk I heard between them.

370 Q. Now, did Mr. Rouze absolutely decline to have anything further to do with this grub-stake contract?

A. He quit and went away. I suppose he must have declined.

Q. How was the interests then arranged among you under this grub-stake contract?

A. There was nothing more than a verbal contract made between Seaver, Acheson, Dunscomb, and I. I don't know who did the talking.

Q. After Mr. Rouze dropped out was it not then the understanding that all claims located under the contract should be located one-fourth in your name and the balance in their names?

A. Yes, sir; and I was to have all the pay that Mr. Rouze and I were to get. Instead of $37 a month, I was to have $75 a month.

Q. Now, when did you have the survey made of that ground as the Smuggler No. 2 or Smuggler 2?

A. Well, it was some time along the 1st of June; I don't remember the date.

Q. How long after the survey was made before the certificate was made out?

A. I think the certificate was written out that night by Mr. Seaver.

Q. Who was the engineer that made the survey?

A. I can't remember who it was. It was a man taken over there by Mr. Wheeler, I think; I don't know that he was.

Q. Now, Mr. Johnston, did these contractors—Acheson, Dunscomb, and Seaver—pay you anything before you went to Aspen?

A. Yes, sir.

Q. How much?

A. I think they gave me one hundred dollars.

Q. That was all, was it?

371 A. I am not sure. I bought a couples of ponies, and I think I paid $60 for one and $35 for another. That was all they gave me at the time the contract was made.

Q. And when after that did they pay you anything?

A. Well, they gave me a little money when we started away from here; it was not a great deal.

Q. When you started to — up to Aspen?

A. Yes, sir.

Q. Can you approximate it?

A. No, sir.

Q. Now, Mr. Johnston, how much did they pay you altogether prior to the location of the Smuggler No. 2?

A. Well, sir, I could not state exactly. When I went to Aspen—when Seaver turned back—he gave me some money. When he turned back he says to me, "I will give you whatever you want if you will go over there and set up the stakes," and I said, "I will leave it to you," and he took out his pocket-book and gave me some money—I don't know how much—and I went over there and stopped a couple of weeks.

Q. That, as I understand, was in April?

A. I think it was earlier than April. We left here for Aspen the last of February or the first of March.

Q. What did you do at Aspen?

A. I set up stakes on the ground I had located the fall before and done some assessment work; stayed there two weeks or more with a man by the name of Evans and paid him $15 a week and had him do *so* some work for me and paid him for it.

Q. Did you at that time adopt the name Smuggler 2 for the claim?

A. No, sir; it was called, I think, the Little Pearl.

Q. As yet no location certificate had been made out and no record of it?

A. No, sir; just location stakes set out.

Q. You stayed there that time two weeks?

A. Two weeks, if not longer.

372 Q. When you came back where did you come to?

A. I finally came home to Littleton.

Q. Do you remember about what time you reached Littleton?

A. No, sir; I don't remember the exact date, but it was in the spring of 1880; before April some time—before the first of April—because we started from here the first of April, about, to go over the second time.

Q. Did you see any of these parties—these partners—at that time you were at home?

A. Yes, sir.

Q. Which one or who?

A. I saw Dr. Dunscomb here in Denver and we bought a bill of grub. I helped him buy it and designated what to be bought.

Q. Was that in April, 1880?

A. Yes, sir; I think so.

Q. How long before you went back to Aspen?

A. Well, we started within a few days after the grub was bought. Mr. Rouze and I took the ponies and rode horseback from here to Buena Vista and Dr. Dunscomb came on the train.

Q. What was the reason that Mr. Seaver proposed to go over with you when you made the first trip?

A. I don't know that I could state the reason. I had these claims located the fall previous with stakes out, but no record of them, and I understood the law was that the staking would hold them for ninety days. I had several located and the ninety days would expire pretty soon—before we would get there by waiting for the pack animals—and that, I think, induced him to go over.

Q. This was after the execution of this contract?

A. Yes, sir.

Q. What grub was bought by Dr. Dunscomb at the time you say he bought a bill of grub, which you designated the articles to be bought?

373 A. I could not designate the articles now. I remember what the freight on them was from here to Buena Vista.

Q. You remember what the cost of the articles of grub was?

A. No, sir; I could not say. I don't remember what the cost of the bill of grub was, but I remember what the freight was from here to Buena Vista; it was five dollars or five dollars and thirty, forty, or fifty cents.

Q. Now, Mr. Johnston, you got back to Aspen some time in April, didn't you?

A. Yes, sir.

Q. What did you do then—after you got back?

A. Went to work on these claims. This claim was called the Pearl. When I located it I called it the Badger Boy, and I think I called it the Pearl—the Little Pearl—afterwards, or else called it the Little Pearl first and then the Badger Boy.

Q. By these names you mean the ground you had called the Badger Boy and the Pearl?

A. Yes, sir; there was other claims on the Aspen mountain. I had three claims located on Vallejo gulch.

Q. Were those included in this contract with Dunscomb, Acheson, and Seaver?

A. Yes, sir; there is a record of three or four other claims besides the Smuggler 2, or at least there should be; they were surveyed.

Q. What work did you do on this claim—the Badger Boy and Pearl—before you went in there the second time?

A. I drove in a open cut on the side of the mountain so as to make the face ten feet on the upper side—I think about that.

Q. What do you mean, ten feet below the surface?

A. Ten feet face.

Q. Of the drift?

A. Yes, sir.

374 Q. How far in did you run that drift?

A. It was run in — slide about 45 feet, and we had run it in I don't know how far.

Q. You say the drift sloped?

A. No; the side of the hill.

Q. You know how many feet you drove that in from the place where you started?

A. Where we began work?

Q. Yes, sir.

A. Some 12 or 14 feet or maybe more.

Q. Is that the cut on which you located the Smuggler No. 2?

A. No, sir.

Q. What was the Smuggler 2 located on?

A. It was located on a new drift—a new tunnel—that we started there in the spring. We started to work in this drift. I started the fall before. There was a difference of between 20 or 30 feet in the

location of the two drifts; one was 20 or 30 feet higher up than the other. We worked there a few days and I made up my mind that the drifts were too high up.

Q. So you came down?

A. Yes, sir; to the original drift I had run in the fall.

Q. You came down to the Badger Boy drift?

A. Yes, sir; and worked there a few days, and I concluded that we was too low down the hill, and so I started a new one entirely.

Q. Where did you start that one, Mr. Johnston?

A. We started up the hill—farther up the hill—from the end of the Smuggler. Between those two—about half way between the two drifts.

Q. Then there were three drifts altogether on the ground?

A. Really only one drift, because this one went on the surface.

Q. Then this last one is the one upon which the Smuggler 2 was located?

A. Yes, sir.

Q. How far was that driven in at the time the location was made?

375 A. I can't remember exact, but think it was in 25 or 30 feet.

Q. Were these parties over there during that time—any of them?

A. They came in about a month after I came there; some time during May.

Q. Who came?

A. Mr. Dunscomb and Mr. Seaver.

Q. Did they pay you anything or furnish you anything at that time?

A. They brought in this bill of grub we had shipped from here in the spring, except what this man Louis—Miller I think his name is—and I. We brought in two half sacks of flour, 50 pounds, on our backs and some other stuff.

Q. And they brought the balance in?

A. I suppose they brought the most of the balance. I think they used some of it; a keg of whiskey was gone.

A. Now, when did they next pay you anything or furnish you anything, Mr. Johnston?

A. Well, they stopped in there awhile, and Mr. Acheson came in a few days after that and stayed there a few days and went out. Mr. Seaver and Mr. Dunscomb started out to get grub—they were to be gone ten days. After they had been gone out a week or ten days Mr. Acheson came in in a few days after I had cut the ledge on the Smuggler 2; then Mr. Acheson came in.

Q. A few days after Mr. Acheson came in you cut the ledge?

A. He came in a few days after I discovered mineral.

Q. Did he come in after you discovered the mineral?

A. Yes, sir.

Q. Then you had discovered mineral before he came in?

A. Yes, sir.

Q. When do you say it was that Dunscomb and Seaver left to get grub?

A. Well, they left some time the first of June.
Q. About the first of June?
A. They left after these surveys were made; I think the next day.
376 Q. Were they there when the Smuggler No. 2 was located or rather surveyed—both of them?
A. Yes, sir.
Q. About what time was it that Mr. Acheson came in?
A. He came afterwards; probably a month.
Q. After they had left?
A. Yes, sir.
Q. How long did Mr. Acheson remain that time?
A. One night.
Q. Did he go upon the hill?
A. Yes, sir.
Q. Did he go into the tunnel?
A. Yes, sir.
Q. Did you have any conversation with him there about what you had struck?
A. Yes, sir.
Q. What was the nature of the conversation, Mr. Johnston?
A. I told him we had made a discovery there and took him and showed it to him. We had some ore piled on the dump—a ton or two of low-grade ore.
Q. You say that he stayed over night?
A. Yes, sir.
Q. What time in the day did he get in there?
A. Well, he got in the after part of the day.
Q. Then it was the next day that he went in there?
A. Yes, sir; next morning.
Q. And he left that day?
A. He left that day.
Q. What did he leave for?
A. He wanted to get grub and money—that is what he said—to pay the men and the debts that had been incurred.
Q. At the time the Smuggler No. 2 was located—that is, at the time the survey was made—how did the account stand between you and Acheson, Dunscomb, and Seaver?
A. At the time the location was made?
Q. Yes, sir; at the time the survey was made.
A. The first survey?
377 Q. The survey of the Smuggler No. 2?
A. I could not state exactly; they were owing me for some work, and we had also contracted some little bills for grub.
Q. Do you remember how much for the grub they were owing you?
A. No, sir; I don't remember how much they were owing me; they agreed to pay me $75 per month.
Q. I mean how much were they owing to the men; not what they were owing you.
A. I could not state exactly, but we were probably in debt five or

six hundred dollars at that time. We were working five men at four dollars a day or three dollars a day and board. Where they paid their own board it was four dollars a day.

Q. How long after you struck that ledge of mineral did you survey the ground as the J. C. Johnston? How long after Acheson was there?

A. It was something like a month. I can't remember exactly—probably a month—three or four weeks, any way.

Q. Did you strike it in the drift or cut?

A. We struck it in this last tunnel.

Q. Well, call it a tunnel, then, that you ran into the mountain.

A. Yes, sir.

Q. Did you find it in place there?

A. Yes, sir.

Q. Did you find the walls?

A. No, sir; didn't cross-cut for the walls. I sunk a shaft on the ore.

Q. That is a shaft inside the tunnel?

A. Yes, sir.

Q. And this was the J. C. Johnston location?

A. Yes, sir.

Q. Did you continue work on that tunnel from the time you located the Smuggler No. 2 until you struck ore in it?

A. Yes, sir.

Q. How many men were working there?

378 A. Well, I was working two men there and I had men working on other claims.

Q. I am talking about that particular claim.

A. Worked two men and I was there a good deal of the time.

Q. How many shifts a day?

A. One.

Q. How much farther did you run that tunnel in after the Smuggler 2 was located before you cut this vein?

A. I think the tunnel was 72 feet long when we cut the vein; that is my recollection of it.

Q. After Mr. Acheson left that time, after you had cut the vein in this tunnel, when did you next see or hear from any of these parties?

A. I had a letter or two from Mr. Dunscomb at Buena Vista. I wrote out to him about grub and other matters.

Q. Have you got those letters, Mr. Johnston?

A. No, sir; I have not.

Q. Have you lost them?

A. I guess I have.

Q. What were the contents of them?

A. That I can't tell you, Mr. Thompson; of course, the letters were business letters about grub and etc. and going on and doing the best I could.

Q. Do you recollect how long after Mr. Acheson left before you received them?

A. I don't remember. I may have received one before Mr. Acheson came in; I don't know but what I did.

Q. You received more than one, didn't you?

A. Yes, sir; I think I received two and maybe three—two, any way.

Q. Have you any recollection when you received the second one?

A. No; I could not give this because—but it was after Mr. Acheson went out.

Q. Is not the tunnel on which the J. C. Johnston is located the same tunnel extended on which the Smuggler No. 2 was located?

379 A. Yes; I guess it was. I don't know that the location stake was set in that tunnel, but I think it was the same ground. I believe the location stake stood in one of the other tunnels on the Smuggler 2; I think it did—in fact, I know it did. The location of the Smuggler 2 was made on that same tunnel that the J. C. Johnston was located on.

Q. Now, Mr. Johnston, how did you come to locate that ground as the J. C. Johnston?

A. Well, as I said before, we were in debt and had contracted with Mr. Crittenden for grub and he was kicking about his money, and these parties didn't come in. They wrote they would be in, but didn't come, and Mr. Crittenden said he would assume all the debts and pay all the men if I would go to work and let them relocate that ground again and let them have half of it.

Q. And in pursuance of that deal it was located in your name—half in Crittenden and Adair's name and half in yours?

A. Yes.

Q. You made the deal with Crittenden?

A. Yes, sir.

Q. Then it was Mr. Crittenden who suggested the idea of making that new location?

A. Well, I think it was. Mr. Crittenden, of course, wanted his money.

Q. Did Mr. Crittenden pay the indebtedness to the men?

A. He paid most of it.

Q. He paid most of it?

A. Yes, sir. He paid all the men that left, and he and Mr. Adair assumed the responsibility of paying the men there; but there was one man that he didn't pay. He came out with me to Leadville, and Mr. Crittenden was to pay him—it was Mr. White—at Leadville. So we came out to Leadville, and before the matter was consummated Mr. Acheson turned up, and he bought off Mr.

380 Crittenden and Mr. Adair, paid them their money back, and gave them, I think, a hundred and fifty dollars for their trouble and expense.

Q. That is, he paid them all the indebtedness they had paid and one hundred and fifty dollars for their trouble and expenses?

A. Yes, sir; for their interest in the J. C. Johnston location, and it was deeded over.

Q. When you made this deal with Crittenden, did you make any agreement to pay anything to Acheson, Dunscomb, and Seaver?

A. Yes, sir.

Q. What was he to pay them?

A. I think it was in the agreement that he was to pay them back what they had expended in the development of this mine.

Q. Was that figured out at the time you made the deal with Crittenden?

A. I think it was.

Q. Do you recollect what it amounted to?

A. I do not.

Q. Do you remember when Acheson consummated this deal with Crittenden and Adair in Leadville?

A. It was along about the 10th of August, I think.

Q. About the 10th of August?

A. Somewhere the first and the tenth.

Q. Were you there at the time?

A. Yes, sir. The matter was all talked over in the room that I occupied there at the hotel, and the transfer was made.

Q. Were you present when the deed was made by Crittenden and Adair?

A. I can't say that I was. I was present when it was signed, but I believe it was acknowledged somewhere else.

Q. When did you go back to Aspen, Mr. Johnston?

A. I went back to Aspen in 1881.

Q. You didn't go back that year?

A. Yes, sir; that fall, 1880.

381 Q. Do you remember what month?

A. No; I do not, but it was in the fall of the year.

Q. You went there with Chatfield?

A. Yes, sir.

Q. How long had you been talking with Chatfield about this deal before the bond was made—the mining bond?

A. I don't know; probably a month. Mr. Chatfield proposed, at Leadville, before I left there, to buy the one-fourth interest I had.

Q. That was in August?

A. Yes, sir; that was after I made the agreement with Acheson for him to pay me what he owed me and my expenses home and back, and I was going to work again under the original agreement. After he made the agreement with Crittenden and Adair he agreed that he was to pay me five hundred and twenty-five dollars and I was to deed him a one-fourth interest in the J. C. Johnston and go to work under the same old agreement.

Q. Was this last agreement with Acheson verbal or written?

A. It was verbal. He paid me—I thought it was fifteen dollars, but Mr. White thinks it was $25—and he owed White $150, and under this deal Acheson was to pay him this $150, and he paid him $100, and he agreed to meet him and me at my place the following Saturday—I think it was the fore part of the week—within a few days, anyway—and pay me five hundred dollars and Mr. Wood

this other fifty dollars, and I was to go back to work under the original agreement.

Q. That occurred in Leadville?

A. Yes, sir.

Q. In August?

A. Yes, sir; I think it was August—along about the 10th of August.

Q. And he was to come to your house at Littleton?

A. Yes, sir.

382 Q. When did you next hear from him?

A. I had a letter from him—that I could not state exactly.

Q. Is that letter in your possession?

A. No, sir.

Q. Is it lost?

A. Lost.

Q. You may state the contents of that letter.

A. Well, the contents of the letter was that he would be at my house in a few days. I think he stated a day or about a day that he would be there; that he went to Kansas City for the money. I think the letter was dated at Kansas City. During this time Mr. Chatfield had bantered me to buy this interest.

Q. During what time?

A. Mr. Acheson didn't come, as he agreed to, and Mr. Chatfield wanted to buy this interest, and I told him I could not sell because I expected Acheson in a few days to pay me.

Q. When did you go back to Aspen, Mr. Johnston?

A. I went back in the fall of the year after I had made the sale to Mr. Chatfield.

Q. After you made this bond?

A. Yes, sir.

Q. Where was that bond drawn up?

A. Gen'l Brown drew it up here in Denver.

Q. Did you come over from Aspen with Mr. Chatfield at the time you made the deed to him?

A. Yes, sir.

Q. Did you arrive at Leadville on that day or before?

A. The day we made out the deed?

Q. Yes.

A. I think we arrived there before.

Q. Do you remember how long before?

A. I think it was the day before.

Q. Did Mr. Chatfield come with you?

A. Yes, sir.

Q. Came with you from Aspen?

A. Yes, sir.

Q. Did either myself or Mr. Sayr see you before you came

383 into our office on the day that the deed was made or the day before?

A. No, sir.

Q. That was the first you saw of us when you came into the office?

A. Yes, sir; the first time I ever saw either of you. I had heard of Dan. Sayr here in Denver, but did not know him personally.

Q. How long did you remain in the office when you came?

A. I don't remember how long; probably three or four hours during the day.

Q. Do you remember what time of the day you came into the office?

A. I do not, but it seems to me it was immediately after dinner; we may have been up there in the forenoon and then went back in the afternoon.

Q. I will ask you if it is your recollection that you were there more than — hour on that day.

A. Well, it seems to me, Mr. Thompson, that we were there more than an hour, but I can't recollect; it appears as if we were there from two to four hours.

Q. Didn't you come into our office about two—a little after two—in the afternoon?

A. Well, I can't say positively, because I can't remember.

Q. I will ask you if you didn't go out, you and Mr. Chatfield, together a little after three o'clock.

A. Well, I don't know as to that—as to the time. We were there anyway long enough to transact this business. It seems to me that we went out and came back again before these papers were signed.

By consent of counsel the further taking of testimony in this case is hereby continued until Thursday, the 12th day of April, A. D. 1888, at the hour of ten o'clock.

JOHN W. WEBSTER, *Examiner.*

384 THURSDAY, *April 12th*, 1888.

Parties hereto appeared by their respective counsel, and by consent the further taking of testimony herein is continued until Saturday, the 14th day of April, 1888, at the hour of 10 o'clock a. m.

JOHN W. WEBSTER, *Examiner.*

SATURDAY, *April 14th*, 1888.

JOHN C. JOHNSTON, being recalled on his own behalf, testified as follows:

Cross-examination by Mr. THOMPSON continued:

Q. Mr. Johnston, was this contract that you made with Chatfield on the 12th day of October, 1880, the last contract you ever entered into with him on the subject of this property?

A. Yes, sir.

Q. Now, after you located the Smuggler 2 or Smuggler No. 2 lode—it seems to be called by both names—you went right on work on it, did you?

A. Yes, sir.

Q. And developing it?

A. Yes, sir; we were prospecting for the ledge at this time.

Q. It is what is properly called development work, is it not?

A. I suppose so. It wasn't development work, though; we were cross-cutting for the ledge.

Q. You kept on working all that summer, and after locating it, until you disclosed the ledge or vein?

A. Yes, sir; we may not have worked every day, but we worked.

Q. I don't mean that you did. I mean you worked—you continued to work.

A. Yes, sir.

Q. Then, about a month after you disclosed the vein on the Smuggler 2 you located the J. C. Johnston, did you?

385 A. Well, it was something like that; it may have been a little less or may have been a little more.

Q. I said about.

A. Yes, sir; about.

Q. You made this location of the J. C. Johnston at the suggestion of Mr. Crittendon?

A. We made it after entering into the agreement with Crittendon. Of course he came to me and wanted his money out of the concern—that was the way the matter was closed up.

Q. You entered into an agreement with him. How long before you located the J. C. Johnston was that agreement made, as near as you can remember?

A. We were talking about it a day or two, I don't recollect how long, and the agreement was made, and the survey was made immediately thereafter, probably the next day.

Q. The occasion of making that agreement was his desire to get his money—to get what the mine owed him?

A. That was the inducement he held out to me, and held out the idea to me that these parties had vacated and would not be back.

Q. Up to that time—up to the time of making that agreement with him—you were in good faith working under the grub-stake contract and complying with its terms upon your part, were you?

A. I was trying to, and I think I did.

Q. At the time of making that agreement with Crittenden you ceased to work under the grub-stake contract?

A. Yes, sir; well, of course, this contract was not consummated at all. The consummation of the contract, the final consummation, was to take place at Leadville. Mr. Crittenden didn't pay all the money that he agreed to at Aspen. He said he had to go to Leadville and get the balance of the money, so I left my men at

386 work there—still working in this location tunnel of the J. C. Johnston location—with the understanding that as soon as Mr. Crittenden consummated this contract with me they would then work under the management of Mr. Adair.

Q. I will ask you if the agreement with Mr. Crittenden was not made about the fourth or fifth day of August, 1880.

A. It was made some time about that date; yes, sir. I can't remember the exact date.

Q. I will ask you if in making this agreement with Crittenden and Adair, Adair signed that agreement, didn't he?

A. I think he did.

Q. After making this agreement with them did you do any further work in that ground under the grub-stake contract?

A. Well, the understanding was, of course, that after we consummated the deal they were to continue work right along with the men—the men were to stay there while we went to Leadville, and there was a kind of verbal understanding between Crittenden and I that if they didn't pay this money as per agreement at Leadville it was no go.

Q. This, however, is true, that up to that time—up to the time of making that agreement with Crittenden or Crittenden and Adair, as the case may be—you were working under the grub-stake contract?.

A. Yes, sir; I was furnishing the grub, though, the last month and a half myself.

Q. Approximate the time when you struck the vein on that ground—was it about the first of July?

A. I guess it must have been about the first of July. It wasn't from the first of July, 1880.

Q. I will ask you if it was Mr. Crittenden's idea or yours

387 that he should take that method or you should take that method of discharging the indebtedness to him.

A. Now, I will just answer that question by explaining the whole matter. After these original partners had gone out to Buena Vista and didn't return, as they agreed to, in ten days, Mr. Crittenden was unwilling to let us have any more grub on their responsibility, but said that I could have it on my responsibility, and I said all right, and so we went along for some time. Well, it ran along, and they were gone and didn't come in, and, of course, the bill was running up. I was working five or six men, and grub was pretty high at that time there, and I would see Crittenden every few days, and he would want to know what I had heard from these parties, and finally he made this proposition to me to secure himself and me also. Now, I believe it was made on Crittenden's suggestion. He spoke about it first.

Q. And you relocated the claim?

A. Yes; we didn't relocate it; we located a new claim.

Q. By locating the J. C. Johnston claim?

A. Yes, sir.

Q. You entered into this contract and then located the claim?

A. Yes, sir.

Redirect examination by Mr. WILSON:

Q. Then there was a time, Mr. Johnston, prior to the location, or I will say period of time prior to the location of the J. C. Johnston that you were working the Smuggler No. 2 on your own responsibility and with your own means, unsupported by your partners under the grub-stake contract?

A. Yes, sir; as I stated, Mr. Crittenden had the best store
388 and about the only one there, and he refused and would not let me have any more grub on the responsibility of these parties who had gone out, but said that if I would stand responsible myself I could have it.

Q. Then to that extent you were not working under the grub-stake contract?

Mr. THOMPSON: You are asking leading question, Mr. Wilson. I shall have to object to the question.

Q. Perhaps I can make it unobjectionable. Then from that time were you or were you not working under the grub-stake contract?

A. Well, now, I could not answer that. I know that I was working and getting grub on my own responsibility. I know I was doing the very best I could to keep the work going on and getting this credit on my own responsibility, and, of course, I was getting anxious about them at that time. Parties told me they would not come back, and even some of the men said they did not believe they would come back, and when this proposition came up I accepted it to protect myself and my creditors.

Q. Now, one other question was asked you by Mr. Thompson before, and your answer does not seem to be very clear, and I want to refer to it again. I understood you to say that, as a matter of fact, the discovery of the vein in the Smuggler No. 2 was not made in the original discovery cut, but under the discovery stake. Now, is this correct, Mr. Johnston (reading)? "Q. Is not the tunnel in which the J. C. Johnston — located the same tunnel extended on which the Smuggler No. 2 was located? A. Yes; I guess it was. I don't know that the location stake was set in that tunnel, but I think it
389 was the same ground. I believe the location stake stood in one of the other tunnels in the Smuggler 2. I think it did; in fact, I know it did. The location of the Smuggler 2 was made on that same tunnel that the J. C. Johnston was located on."

A. What I mean by location is when you make a location, the date of the location—the first stake set up on the Smuggler 2 ground, and I don't know whether it was afterwards moved or not. The first location, of course, had stood there, and afterwards we moved the place. We were prospecting there up the hill when the location survey was made, and the stake was set up on top of the hill opposite or as near as we could set it up opposite the vein. We drove in a tunnel 72 feet to cut the vein and the location stake we surveyed from to make the survey location.

Q. What do you mean by the first stake of the Smuggler 2? When was that set up?

A. I think in the spring when we went over there. We called it the Smuggler 2.

Q. And afterwards you moved that stake?

A. We didn't move that stake.

Q. Afterwards set another discovery stake?

A. When we made the survey?

Q. When was that?

A. Along about the first of June; we may have moved the old stake before, but I think we cut a new stake.

Q. Was it on that discovery stake that you run this tunnel in which you cut the ledge?

A. No, sir; it was on the original stake I had set up in the spring, setting in a cut a little down the hill.

Q. So that, as a matter of fact, when you cut the ledge you
390 didn't cut it under or on the discovery cut or stake?

A. We hadn't made any discovery, but the stake we first set up stood there, and we moved further up the hill and drove this tunnel. We were prospecting, of course, and the stake stood a little way down the hill and toward the Smuggler that we called our location stake.

Q. Where did you set your discovery stake of the J. C. Johnston?

A. Well, now, that I could not tell you. I wasn't there.

Q. Was it set at the opening of the tunnel?

A. When I was over there after the location was made it was sitting up the hill over this tunnel, I suppose, as near as they could set it over the vein of ore.

Q. Was it in the same place or a different place as the last discovery stake of the Smuggler 2?

A. It was a little farther up the hill. As I said, that plat don't show the ground. The plat does not show it to be on the same ground as the Smuggler No. 2; not all of it.

Q. Was the discovery of mineral on the Smuggler No. 2 made upon or under the last discovery stake which was set on the Smuggler No. 2?

A. Well, do you call the last discovery stake the one we surveyed from?

Q. Yes, sir.

A. The discovery was made after—yes, was made under that discovery stake.

Q. I understood you to say some time ago that you went back to the old discovery that was made there.

A. When the surveyors were there we had no ore. It was in slide.

Q. I understand that.

A. We set the starting point of the claim two hundred feet
391 running down towards the Smuggler No. 1, southwest or whatever the direction was, and we claimed the balance up the hill. After we took this stake we started two hundred feet from the Smuggler claim and called that the center of the claim and made the survey from that stake.

Q. Where was the tunnel in which you afterwards made the discovery in reference to that stake?

A. That stake, of course, as I told you, we moved it two hundred feet away from the end of the Smuggler, and we claimed two hundred feet to the Smuggler, and then we found it was only one hundred and forty or one hundred and fifty feet instead of two hundred.

Q. Where was the mouth of the tunnel in which you afterwards made the discovery of the vein with reference to that discovery stake?

A. The mouth of the tunnel was down hill. If you start and drive the tunnel into the mountain like this (indicating), the stake is up here somewhere—upon the hill, above the mouth of the tunnel.

Q. How far from the mouth of the tunnel was the stake?

A. I don't know; thirty or forty feet. It wasn't setting directly over the tunnel, but was setting over the tunnel probably thirty or forty feet higher up the mountain.

Recross-examination by Mr. THOMSON:

Q. I will ask you a question, Mr. Johnston. What surveyor made the survey of the J. C. Johnston?

A. I don't know the gentleman's name. I disremember it.

JOHN C. JOHNSTON.

Subscribed and sworn to before me this 8th day of October, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

392 By consent of counsel the further taking of testimony in this case is hereby continued until Wednesday, the 25th day of April, A. D. 1888, at the hour of 10 o'clock a. m.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this 25th day of April, A. D. 1888, at the hour of 10 o'clock a. m., it was, by consent of counsel, continued until Thursday, this 26th day of April, A. D. 1888, at the hour of 10 o'clock a. m.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Thursday, April 26th, 1888, at 10 o'clock a. m., counsel for the respective parties being present—

DANIEL SAYER, a witness produced on behalf the complainant, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct examination by Mr. WILSON:

Q. Where do you reside, Mr. Sayr?

A. Leadville.

Q. Are you a member of the firm of Thomson & Sayr?

A. I am.

Q. Was that firm in existence in 1880?

A. It was, sir.

Q. I will ask you to state what that book is (handing witness book).

A. It is the record book—minutes of the proceedings of the board of directors of the Fulton Mining Company. It is also a record of the proceedings of the stockholders.

It is stipulated by and between counsel for respective parties that a copy of this book may be introduced in evidence.

393 Q. Are you secretary of the Fulton Mining Co.?

A. Yes, sir.

Q. How long have you been such secretary?

A. I think I have been secretary from the time that the company was organized, and if the company is in existence I have not been removed; I might say during the whole period of its existence.

Q. The company has never been formally dissolved?

A. No, sir; not to my knowledge.

Q. Please identify that book (handing witness book).

A. That is the stock register of the Fulton Mining Company.

Q. What does that book show or purport to show?

A. It shows the amount of stock issued, and the persons to whom it was issued, and the date of issuing, and the number of shares, and to whom transferred.

Q. Are you acquainted with H. M. Holden?

A. Yes, sir.

Q. Do you know when and how he obtained his interest as a stockholder in the Fulton Mining Co.?

A. I think he obtained his interest by virtue of certain claims that he had on the property of the company, he in conjunction with others that he represented.

Q. Do you remember an entry which was made on the record book of the Fulton Mining Co., dated April 25th, 1882, of a meeting at which was present Charles I. Thomson, Edward Dunscomb, I. W. Chatfield, and Daniel Sayer? "Whereas Howard M. Holden representing the various parties engaged in litigation with this company, has submitted the following proposition as a basis for the settlement of the conflicting claims: That $37,500.00 shares of the stock of this company are to be issued by the company to Howard M.

394 Holden or to such parties as he may direct upon the conveyance to said company of the interest of the said parties in Smuggler 2, Kansas City, and J. C. Johnston lode, etc.; that upon such conveyance and the dismissal of the suits against this company now pending in the circuit court of the United States for the district of Colorado said shares are to be issued as aforesaid; the adverses pending against the application for patent of said company for its said property to be withdrawn; also the suits against said company in Pitkin county, Colorado, to be dismissed; the residue of the unissued stock of said company to be divided among the present stockholders therein exclusive of the parties receiving said $37,500.00 shares as they may agree among themselves: Therefore resolved, That said proposition be, and the same is hereby, accepted, and the secretary is hereby instructed upon behalf of the company to do all and singular whatsoever may be necessary and expedient to carry into effect and complete the arrangement contemplated by said proposition." Then follows a resolution increasing the stock. Do you remember such entry as that?

A. I can remember substantially of an entry of that sort, but I could not remember the date that it was made unless I would

refresh my recollection. I think that was one of the entries made.

Q. If such an entry was made that is a correct statement of the facts with respect to the issuance of stock to Mr. Holden?

A. Yes, sir.

Q. Now, what were those suits referred to, if you remember?

A. I think a couple of equity suits here in the circuit court of the United States and two suits over at Aspen.

Q. Did the suits all cover the same ground and ask for substantially the same relief?

A. They were suits affecting the Johnston by setting up a
395 claim of this Smuggler 2 against the Johnston, and I think the two suits at Aspen were adverse suits, as I recollect.

Q. Didn't the two suits at Aspen relate to the side-line conflict between the Chatfield and the old Kansas City claim?

A. Mr. Thomason was attending to those suits and I am not able to say. What suits there were Mr. Thomson was defending them and knows more about it that I do.

Q. Is it a fact that Mr. Holden had knowledge of those suits and was the real party in interest and was prosecuting them?

A. My recollection is that there were several other parties in this suit who were plaintiff- with him. I don't know that I ever read the complaints in any of the cases. Whatever the cases were the record will show.

Q. Is it a fact that Mr. Holden represented the various parties—the parties who were the principal parties at the time the stock was voted and issued to him?

A. That I cannot say.

Q. Did the Fulton Mining Company, at the time of the resolution referred to, assume that Mr. Holden was authorized to represent the various parties to the litigation against the Fulton Mining Co.?

A. I presume that the company did, although I don't know positively.

Q. Do you know Mr. W. J. Anderson?

A. No, sir.

Q. You have never met him?

A. I may have met him. I have been in Kansas City and have been in the bank. I think he is the cashier of a bank there. I may have met him, but have no recollection of it now.

Q. What relation have you borne toward the Fulton Min-
396 ing Co. and these mining properties besides being secretary, as you have stated, if any other relation?

A. Well, I have transacted some business for it in addition to the business that would come directly under a head of the secretary's business. There was a lease on the property for awhile and I transacted some business in connection with that.

Q. Were not you for a time managing director and superintendent, having charge or partial charge of the working of the property?

A. Well, nominally I was. There was a vote of the board of directors appointing me to that position.

Q. Do you remember when that was?
A. I should think it was about two years ago.
Q. About two years ago now?
A. Yes, sir.
Q. Do you remember who had charge of the working of the property during the year commencing on or about July 1st, 1886, and ending July, 1887?
A. Well, the work at that time was in charge of Mr. Adams—J. C. Adams. Mr. Chatfield used to pay the bills, I believe, as he was the nominal superintendent, but Mr. Adams had charge of the men through the work, substantially.
Q. The year commencing July, 1886, and ending July, 1887, or about that period of time?
A. Well, I can't say; I had the impression that it may have been July, 1885, that Mr. Adams was working there and Mr. Chatfield was looking after it.
Q. In whose employ was Mr. Adams at that time?
A. He was in the employ of the Fulton Company.
Q. Did the Fulton Company have charge of the working of the property up to the time that the Standard Company acquired title?
A. Yes, sir.
Q. Are you a stockholder of the Standard Co., Mr. Sayer?
397 A. Yes, sir.
Q. I will ask you whether or not the stockholders of the Standard Company are the same as in the Fulton Company, or substantially the same.
A. I think they are.
Q. And whether or not there was any consideration for the transfer to the Standard Company other than the issuance of the stock to several stockholders of the Fulton Company—that is, the issuance of the stock by the Standard to the stockholders of the Fulton Company.
A. I think that was substantially the consideration.
Q. As a matter of fact, did Mr. Anderson ever pay any money to the Fulton Mining Co. for his deed to the Fulton Co.?
A. Well, that I can't say.
Q. He was a mere trustee or holder of the title until the transfer to the Standard Company?
A. I think that he was; it was my understanding that he was substantially.
Q. Mr. Anderson never worked the property, did he, the Johnston or Chatfield claims?
A. It may have been worked at the time that the title was in him.
Q. He did not work his own interest?
A. He was living in Kansas City.

Mr. THOMSON: It was worked in his name for the benefit of the Fulton Company?
Mr. WILSON: That is admitted, is it?
Mr. THOMSON: Yes, sir.

Q. Are you acquainted with Mr. W. J. Wilson?

A. Yes, sir.

Q. Were you present in Leadville at the time of the execution of a certain contract between I. W. Chatfield and J. C. Johnston,
398 the plaintiff in this case?

A. I was in Leadville, but I was not present when the contract was signed.

Q. You were not present?

A. No, sir; not when the contract was signed.

Q. You know nothing about the circumstances of the execution of that contract?

A. I know that Mr. Chatfield came to me and told me after the deed was executed from Mr. Johnston to Mr. Chatfield—I think it was the afternoon of the same day—Mr. Chatfield came to me and told me that Mr. Johnston claimed that he had given him a bargain, and that he wanted me to write him a contract that in the event that the whole title should be acquired by Mr. Chatfield and the acquiring the whole title himself—he wanted me to write up a contract obligating him to convey one-eighth interest in the property to Mr. Johnston, and I wrote up the contract; went upstairs in Leadville, and after awhile he came back and said that Mr. Johnston didn't understand the few lines that was at the end of it and didn't want it there. "Well," I said, "I will scratch it out," and my recollection is that I had our clerk put the notarial acknowledgment on it, supposing that Mr. Johnston would come down to acknowledge it, but he has never come to acknowledge it.

Q. You drew the contract?

A. Yes, sir; after he told me that Mr. Johnston claimed that he didn't understand the few last lines at the end I said very well, and scratched them out.

Q. Did those few last lines contain this condition, that is was only on condition that Chatfield acquired the whole title that Johnston was to get one-eighth back?

A. I don't think it did.

Q. Did the contract as written by you and signed contain any such provision as that?

399 A. Yes; that is my recollection of it.

Q. What connection, if any, had W. J. Wilson with that transaction between Johnston and Chatfield?

A. I don't know. I don't know that he had any.

Q. Who do you say the first stock was issued to by the Fulton Mining Co.?

A. To whom was the first stock issued?

Q. Yes, sir.

A. I would have to have certificate No. 1 to tell that.

Q. I thought you could get that information by referring to the stock ledger or stock book which you have in your hand.

A. There was another stock book that is not a stock ledger in which were entered the stock certificates when there was only one hundred thousand shares. I am unable to say to whom the first stock—the first certificates of stock—were issued from this book, be-

cause there was another stock certificate book kept at that time, and this commenced with the increase of stock. I think probably, as near as my recollection goes, it was issued to Chatfield—Chatfield or Wilson—and there was no stock ledger kept for that certificate book.

Q. On page 9 of the Fulton Mining Co.'s record I find an entry as follows: "Leadville, Colo., Jan'y 11th, 1881. The board of directors met this day, it being the regular day heretofore provided for the meeting of said board. There were present the president, Edward Dunscombe, Daniel Sayer, and Chas. I. Thomson. It was moved by Chas. I. Thomson and seconded by Daniel Sayer, 50,000 shares of the capital stock of this company be issued immediately to the stockholders in proportion to their respective interests, and
400 thereupon there was issued to Edward Dunscombe 14,583⅓ shares of said stock; to Wm. J. Wilson 12,500 shares of said stock mentioned in certificate No. 3; to Isaac W. Chatfield 12,500 shares in certificate marked No. 5; to Daniel Sayer 3,125 shares in certificate marked No. 6; to Chas. I. Thomson 3,125 shares in certificate marked No. 7. Signed Daniel Sayer, secretary." That entry, I presume, is correct?

A. Yes, sir; and that shows it better than any record I have.

Q. This record of the book wholly answers my question?

A. Yes, sir.

Q. This, then, was the first stock issued to any one by the Fulton Mining Co.?

A. Yes, sir.

Q. What was the consideration for the issuing of the shares of stock to Mr. Dunscombe?

A. My understanding was that it was because he owned the interests adverse to the Johnston lode.

Q. Wasn't Mr. Dunscombe one of the incorporaters of the company?

A. I don't think that he was.

Q. He was president of the company at this time?

A. He was at the time that that entry was made, I think. I don't think that he was one of the incorporaters.

Q. Wasn't he one of the persons named in the certificate of incorporation as constituting the board of directors for the first year?

A. I could not answer that.

Mr. THOMSON: He was one of the incorporaters.

Q. Is it not true that the Fulton Mining Co. was organized by Messrs. Dunscombe, Chatfield, Thomson, Wilson, and yourself for the purpose of acquiring the title to the Johnston lode and working and mining the same?

A. Well, I don't think it was for the purpose of acquiring title. I think it was organized for the purpose of working the lode.
401 I think that the title was acquired before that, as far as I can understand.

Q. The title wasn't in the company, but in some individuals.

Was it not the intention that the persons claiming to have title to the Johnston lode should form a corporation?

A. Yes, sir.

Q. And that they would convey to such company when formed their title at that time?

A. I think so, substantially.

Q. And wasn't this stock mentioned in the resolution which I read stock issued by the Fulton Mining Co. in consideration of the conveyance to it by the persons mentioned therein?

A. I think it was.

Q. The capital stock of the company, I believe, was one million dollars?

A. Yes, sir.

Q. Divided into one hundred thousand shares at ten dollars each?

A. Yes.

Q. That left 50,000 shares in the treasury unissued?

A. Yes, sir.

Q. Now, what was the consideration, so far as you and Mr. Thomson were concerned, for the issuing of those shares to you, 3,125 each?

A. We were to do the legal business.

Q. Didn't you have any title to the property which you conveyed as consideration for this stock?

A. The understanding was, in the first place, with Mr. Chatfield that he would give us an interest in the property. I think it was one-eighth, which resulted in our getting less than one-sixteenth.

Q. This would be one-eighth of the 50,000 shares issued—3,125 to you and the same number to Mr. Thompson, which would make 6,250. That would be just one-eighth of the 50,000 shares, would it not?

A. Yes, sir.

402 Q. Then at that time you received one-eighth of the stock issued?

A. Of the amount issued at that time.

Q. What was the consideration paid by you?

A. Legal services.

Q. Was that the only consideration?

A. Perhaps getting patents for the claims.

Q. Didn't you make some conveyance to the Fulton Mining Co. of some title you had to the property?

A. None that I recollect of.

Q. Do you know what the consideration was from Mr. Dunscombe to the company for the issuing to him of the 14,583⅓ shares?

A. Well, all that I now know or ever did know was that he had some claim in the property, and that was the consideration.

Q. Do you know what that claim was?

A. I think it was something growing out of the grub-stake contract.

Q. Do you know what interest in the property he claimed?

A. I do not; I never transacted any business with him in connection with it.

Q. What was the consideration, so far as Mr. Wilson was concerned, for the one-fourth of the capital stock?

A. He had an interest in the Johnston lode by virtue of a conveyance.

Q. Do you — what the extent of that interest was?

A. I think it was one-fourth.

Q. You think it was a quarter, do you?

A. Yes, sir.

—. How much do you say the stock was he got?

Q. He received 12,500 shares, or one-fourth of the amount issued at that time.

—. What was the consideration so far as Mr. Chatfield was concerned?

Q. He had title to part of the property.

403 Q. Was Chatfield and Wilson equal owners to the property at the time of this transaction?

A. As far as I know, they were.

Q. When did the Fulton Mining Company take possession of the property—the J. C. Johnston lode and the Chatfield lode?

A. That is, taking the actual physical possession of it?

Q. Yes, sir.

A. Well, I think application for patents were made shortly afterwards, and they probably did the assessment work.

Q. How soon after that did the Fulton Mining Company commence active operations of the property?

A. Well, I am unable to say. I have some recollections of a man named W. L. Wilson who did work on it, but how long after that it was I don't know that I am able to say—cannot say.

Q. You say that Mr. Chatfield agreed with you that you were to have one-eighth of the capital stock of this company in consideration for your legal services, etc.?

A. Yes.

Q. Was that understanding had before the company was organized?

A. I think it was, or at the time that the company was organized.

Q. There is no record of that agreement anywhere on the books of the company?

A. No, sir; not that I know of.

Q. Was that agreement between you and Chatfield reduced to writing or verbal only?

A. It is verbal.

Q. Was this agreement known to the directors of the Fulton Mining Company at the time that voted was adopted authorizing the issuing of the capital stock?

A. Yes, sir.

Q. Of course it was known to yourself and Mr. Thompson, but was it also known to Mr. Dunscomb and to Mr. Seaver?

A. I think it was known by every one.

404 Q. At that time who owned the title to the J. C. Johnston lode?

A. I think Mr. Chatfield.

Q. Anybody else?

A. Well, as far as my knowledge extended I only knew—I thought Chatfield was acquiring title to the whole lode, and that Crittenden and Adair was setting up some claim which was understood not to be a valid claim.

Q. Were Crittenden and Adair in the country in 1881, at the time this stock was issued?

A. I thought you identified the question at the time of the formation of the corporation.

Q. I did, but am now speaking of the date of January 11th, 1881.

A. At the time the stock was issued?

Q. Yes, sir.

A. I don't know whether they were or not; I think they were.

Q. Is it not true that Mr. Crittenden left that country in the fall of 1880?

A. That I can't say, but I can remember Adair being around along about that time; he was up to see me frequently in Leadville.

Q. Is it not true that before this time Crittenden and Adair had conveyed their interest in that property, first to Acheson and afterwards to Chatfield?

A. I can't remember the dates, but I think that it was shortly after the incorporation.

Q. Now, at the time of this organization of the company and also on the 6th day of January, 1881, can you swear and will you swear that Crittenden and Adair, or that either of them, were making any claim to this property adverse to the title asserted by the Fulton Mining Co.?

A. In 1881?

Q. Yes.

A. I don't know; I cannot say that they were.

Q. When was the company organized; in December, 1880,
405 was it not? Were they or either of them, on the 13th day of December, 1880, asserting any claim to this property adverse to the right or title of the Fulton Mining Co. or the persons who composed the Fulton Mining Co.?

A. Well, at the time the conveyance was made to Mr. Chatfield I understood that they were making some claim.

Q. But wasn't that before the organization of this company?

A. My recollection is that the organization of the company—that the company was organized, and I understood at that time they were asserting a title to the claim.

Q. The deed was made by Johnston to Chatfield in October, 1880, was it not—the 12th day of October, 1880? Now, after that and before the organization of the company did not Chatfield procure a conveyance from Crittenden and Adair?

A. That I can't say.

Q. Then you can't say whether there was or not at that time any controversy pending or threatened between the Fulton Mining Co. or the persons organizing it and Crittenden and Adair?

A. That I can only speak of from recollection. I understood at that time—about the time the conveyance was made—that they

were claiming some interest in the Johnston lode, but what date they made the conveyance I cannot say.

Q. Was there any controversy pending or threatened at the time this company was organized?

A. Well, that I don't know. I had very little to do with the legal business of the company. Mr. Thompson attended to it. I was city attorney at the time and my hands were full.

Q. What services were you to render in consideration of this one-eighth of the stock?

406 A. Such as getting patents for the claim, attending to such suits as might come up, and perhaps to bring suit to quiet title.

Q. Do you know why it was that in this division of the capital stock no provision was made for stock to represent the one-eighth or the one-fourth claimed by Johnston?

A. I did not understand that he had any claim against the company at all.

Q. Did you think under the contract of October, 1880, which you drafted that he had or would claim an interest in that property?

A. Not unless Chatfield succeeded in acquiring title to the whole property by legal proceedings.

Q. Did you construe the contract at that time as vesting in Mr. Chatfield all the title to this property formally owned by Mr. Johnston?

A. Yes, sir; Mr. Chatfield came around and I think it was a subsequent understanding between Mr. Johnston and Mr. Chatfield that in case Chatfield would perfect the title to this whole property that he would give a deed to Johnston for one-eighth.

Q. Is it not true that the contract — made on the same date that the deed was made?

A. Yes, sir; the same date.

Q. And the same transaction?

A. No, sir; because it was closed in the forenoon and Mr. Chatfield came to the office in the afternoo-.

Q. Do you mean to say that these transactions were separate and distinct and wholly independent of each other?

A. So far as I knew. I supposed that he went around and paid that there was to pay and did what there was to do, and I considered it as a good-natured transaction between Chatfield and Johnston. Mr. Chatfield said in substance that Johnston claimed that he had given him a good bargain.

407 Q. Was any money actually paid in the forenoon of that day?

A. None that I saw.

Q. Was the transaction wholly completed on the forenoon of that day?

A. That is my recollection.

Q. The paper was drawn by you and signed?

A. Yes, sir; in the afternoon.

Q. I thought you said in the forenoon. I am speaking of the deed.

A. Yes, sir; the deed was executed in the forenoon.

Q. It was drawn in the forenoon?

A. Yes, sir.

Q. But there was no money paid in the forenoon?

A. Not that I know of. Mr. Chatfield came to my office in the afternoon and told me about this conversation that he had had with Mr. Johnston and had me draw the contract, and I supposed that he would bring Mr. Johnston over to sign it, but instead of that he took it from the office and came back and said that Mr. Johnston claimed that he didn't understand the last clause of the contract, and I said that was all right; that I put it in of my own notion and would scratch it out.

Q. Was not Mr. Johnston present — the time of this conversation?

A. Between Chatfield and myself?

Q. Yes.

A. No, sir; I never remember of seeing Mr. Johnston from the time that he left in the forenoon of that day until I saw him this morning.

Q. Where did he sign the papers?

A. I don't know that; Mr. Chatfield carried it away.

Q. How did you get possession of it again?

A. Mr. Chatfield used to keep his papers, a great many of his papers—he has some there now—in our safe, and he would leave papers there. The first I recollect of seeing it again was three or four years after that, and then there was a copy of it with it.

408 I don't know who made the copy; it wasn't any clerk around our office.

Q. Then, as I understand, you and Mr. Thompson never conveyed any title to the Fulton Mining Co. and never paid any cash consideration for the stock issued to you, and the consideration was solely your legal services?

A. Not for the stock mentioned, the 3,125 shares.

Q. That was issued to you solely for legal services to be rendered?

A. Yes, sir—that is, for legal services rendered and to be rendered.

Q. What services had been rendered, in point of fact, at that time by you or your firm to Mr. Chatfield or to the Fulton Mining Company?

A. There was one or two consultations with Mr. Chatfield.

Q. What were the consultations about, about this property?

A. Yes, sir; he was talking about buying the property.

Q. On the 25th of April, 1882, as shown by the records of the Fulton Mining Company, page 14, it appears: "The following resolution was also adopted: That whereas the board of directors of this company consider it desirable and expedient to increase the capital stock of this company to the sum of one million two hundred and fifty thousand dollars, therefore resolved that a special meeting of the stockholders of this company be, and the same is hereby, called for the purpose of submitting to a vote of said stockholders the

question of such increase of said capital stock, said meeting to be held at the office of said company on the 6th day of June, A. D. 1882, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of said day, etc." What was the occasion for the increase of the capital stock as suggested in that resolution?

409 A. My understanding was that there were some persons that had claims against the company—that is, claiming title to this property—and upon investigation it was thought that they were legal claims, and the idea was to settle with these parties and use a portion of the capital stock to acquire their title.

Q. But the resolution which I read followed the other resolution which provided for the issuing to Holden and his party of the 37,500 shares of the capital stock, which would still leave 12,500 shares of the original stock unissued. What was the occasion of this increase of $250,000 in addition to this above-mentioned 12,500 shares?

A. I think it was the understanding with Mr. Holden that it was to be increased.

Q. That was a part of the agreement between Holden and the company?

A. Yes; as I understand.

Q. The capital stock was so increased, was it not?

A. Yes, sir.

Q. I read from page 18 of the book already mentioned, "Attention was called to the fact that there are 9,896⅔ shares of the original stock of this company still remaining in the treasury. It was moved by Chas. I. Thompson and seconded by Daniel Sayer that in accordance with the terms of the compromise made with H. M. Holden as set forth in the minutes of the board at the meeting held April 25th, 1882, that a portion of said stock be divided among the original stockholders of this company as follows, to wit, to I. W. Chatfield, ¼ shares, 2,474; to William J. Wilson, ¼ shares, 2,474; to C. I. Thomson, $\frac{1}{16}$ shares, 618; to Daniel Sayer, $\frac{1}{16}$ shares, 618; to Edward Dunscomb, ⅓ shares, 3,298, leaving a balance of said stock belonging to said original stockholders undivided of

410 114⅔ shares in the treasury, and that the secretary be instructed forthwith to issue to the several persons above mentioned a certificate of stock for the number of shares aforesaid, etc." The stock was accordingly issued, was it not?

A. Yes, sir.

Q. What was the consideration so far as you were concerned of the issuing to you of that stock?

A. It was our interest in the company.

Q. Just the same consideration as before?

A. Yes, sir.

Q. You paid no cash for this stock and conveyed no property?

A. Yes, sir; I think there is an error in the computation there which was afterwards corrected.

Q. How long had the Fulton Mining Company been in possession of

the property and working it before you heard of the controversy or the suit represented by Mr. Holden?

A. That I can't remember.

Q. At the time that you organized this Fulton Mining Company did you have any expectation of having any suit or trouble with Holden?

A. Well, Mr. Thompson had the consultations with Mr. Chatfield at the time that Mr. Johnston was present and I was not present at the time. I think I was city attorney at the time and was attending to the police court, and that it was half past ten or eleven o'clock when I would get to the office.

Q. Who worked the property and had actual charge of it at the time that the title was in Mr. Anderson?

A. I think Mr. Brown.

Q. Was he working for the Fulton Mining Company or some one else?

A. At the time that the title was in Mr. Anderson he was working in his own name with the understanding——

Q. Was there any understanding or arrangement between the Fulton Mining Company or the persons who composed it
411 and the persons who composed the Standard Mining Company?

A. I think the same persons composed the two companies.

Q. There was a general understanding at this time that a company was to be organized in Missouri under the laws of that State by those parties, and that you were to receive—you and your associates representing the Fulton Mining Company—were to receive a certain portion of the capital stock of that Missouri Company?

A. Yes, sir.

Q. Upon that arrangement the title was conveyed to Mr. Anderson as a trustee?

A. Yes, sir.

Q. And the title so held until this transaction was consummated?

A. Yes, sir.

Q. Then a deed was made by Anderson to the Standard Mining Co., vesting the title in that company?

A. Yes, sir.

Q. The- you received your stock of the Standard Mining Co.?

A. Yes, sir.

Q. You and your associates?

A. Yes, sir; at least, I supposed they did.

Q. You and Mr. Thompson received your stock?

A. I received mine.

Q. At the time of this arrangement between Chatfield and Mr. Dunscomb, the original grub-stake contracts between Johnston and the Seaver party were produced, were they not?

A. Not that I know of.

Q. Did you not have possession of them afterwards?

A. I did not see them for a long time. I don't remember to have seen them earlier than 1885.

Q. How did you come to get possession of them?

A. I think Mr. Dunscomb gave it to Mr. Thompson. At least, I never remember of seeing it before 1885.

412 Q. Is not that paper that you refer to a copy that Mr. Dunscomb made of the original agreement?

A. I think it purports to be.

Q. You know whether or not the stock of the Standard Mining Company has all been issued?

A. I do not.

Q. Have you any official connection with the Standard Company?

A. No, sir.

Q. You are not an officer in it?

A. Not that I am aware of.

Q. Are you taking any part in the management of the property?

A. No, sir.

Q. Now, was this stock, consisting of 37,500 shares, issued to Mr. Holden before or after the increase of the capital stock?

A. My recollection of it is that it was issued after, but I would have to look at the stock book to see that.

Q. Then of that 37,500 shares, 25,000 would come out of the capital stock as increase, leaving 12,500 to come out of the original stock before the increase?

A. The understanding was at the time of the acceptance of Holden's proposition that the stock would be increased, and it would come out of the 100,000 original shares the company had.

Q. Afterwards the original 8,290 shares unissued were divided up among the original shareholders in addition to the original 50,000 shares issued—that is, there was some issued to Dunscomb and some to Wilson and Chatfield, and 6,250 shares to yourself and Mr. Thompson, which would leave a balance of unissued stock unaccounted for. To whom did that belong, the balance?

A. That is the balance of the 50,000 shares.

Q. Then the shares mentioned in the record of the first issuance of the stock would cover in full 50,000 shares; there would still be some eight thousand shares unissued. Why was not that

413 issued to the owners at that time?

A. My recollection is that the first fifty thousand shares of stock was divided. I think Mr. Seaver got some of it—seven or eight thousand shares.

Q. The records show, however, that after the settlement with Holden that 8,298 shares were divided up among the original parties, Dunscomb and Wilson and Chatfield and Thompson & Sayer.

A. I think that Holden received 37,500 shares, and after that there was something left. There was some sold for the purpose of paying the assessment.

Q. I am speaking of the original 50,000 shares.

A. I remember there were several thousand shares issued to Seaver.

Q. Does the record show that?

A. I don't know whether it does or not; I don't know whether the minutes or proceeding- do. The certificate of stock book containing certificates of stock would show it.

Q. What was the extent of the claim of the parties represented by Holden at the time of the compromise?

A. That I don't remember.

Q. What part of that claim was recognized—what fractional part of that claim was represented by the 37,500 shares actually issued to Holden?

A. That I am unable to say.

Q. Holden didn't get all he claimed?

A. That I cannot say. The stock was issued to him—37,500 shares; I don't know what fractional part of the amount that he claimed.

Q. Now, I will ask you whether at the time of the original transaction at Leadville, when the deed was executed—that is, the deed from Johnston to Chatfield and the contract between Chatfield and Johnston—were any other papers executed.

414 A. Any other contracts, do you mean?

Q. Yes; or papers of any other kind—contracts or deeds.

A. I think there was a deed executed.

Q. What deed was that?

A. I think it was a deed from Chatfield to Thompson & Sayer for one-eighth interest.

Q. In what property?

A. The Johnston lode.

Q. I will ask you if there was a deed from Johnston to Thompson & Sayer of all Johnston'- interest in the Smuggler No. 2.

A. Yes, sir; there was a deed of that sort.

Q. And is it a fact or not that you immediately thereafter made a deed to W. J. Wilson of all your interest in the Smuggler No. 2 except one-eighth?

A. I think there was a deed of that kind made either to Wilson or to Chatfield, I don't know which.

Q. I will ask you whether the claim of Mr. Johnston that is asserted in this suit was ever considered or talked about at the meetings of the Fulton Mining Company, or whether the claim was ever considered by Mr. Holden, as a member of that company or otherwise?

A. I think not. I never heard it mentioned.

Q. You were aware of the two former suits brought by Mr. Johnston, one in the United States court and one in the district court on Pitkin county?

A. Yes, sir.

Q. For the recovery of this same interest?

A. Yes.

Q. Was Mr. Holden aware of those suits?

A. I think so; yes.

Q. Were those suits and the claims asserted in them considered and discussed by the Fulton Mining Company and by Mr. Holden?

A. I know that Mr. Holden spoke about it. I don't remember that a discussion ever came up before the board of directors.

Q. At what time did he speak of it?

A. Probably two or three months after it was brought. I think service was had on him.

415 Q. Do you speak now of the last suit in the State court?

A. I am speaking of the one brought in the circuit court of the United States by Mr. Northrup.

Q. You say that shortly after the institution of the suit Mr. Holden spoke about it?

A. Yes, sir.

Q. He had knowledge, then, of the suit, and the allegations of the complaint?

A. I suppose that Mr. Thompson told him about it. I don't know that I ever read the complaint.

Q. In this contract you drafted at Chatfield's request is the following recital: "That in the event of the party of the first part prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first against persons who claim adverse to him an interest in the following-described property, to wit, the J. C. Johnston lode, etc." Now, I will ask you what that recital referred to as to what was to be done by Chatfield.

THOMPSON: I shall have to object to that question, because it is for the court to construe contracts from what is on the face of the contract itself and not from an opinion of witnesses as to it.

A. I didn't know at the time I drew the contract but what a suit would be brought to quiet the title, and I think it was the intention to apply for a patent, and it was understood that we would be adversed or that there would be some objection or protest and I drew the contract as Chatfield told me.

Q. I will ask you another question. I will ask you what persons are referred to in that recital as to persons who claim adversely to him an interest in the described property.

416 A. I supposed I was referring to Crittenden and Adair. Mr. Johnston was not present at the time I drew the contract, and I drew it at the request and under the instructions of Mr. Chatfield.

Q. How did you know anything about the claim of Crittenden and Adair?

A. Well, I think that Mr. Chatfield had a memorandum of the title at the time and had spoken about other things. I knew of no other persons in the transaction. I was not present at the time that Mr. Thompson and Mr. Johnston and Mr. Chatfield were talking about this matter.

Q. Was it the claim of Crittenden and Adair to the J. C. Johnston lode?

A. Yes, sir; I so understood it.

Q. Now, what was the occasion of the transfer of the Smuggler No. 2 from J. C. Johnston to your firm at that time?

A. Well, it was, I suppose, done to put Mr. Johnston in a position that he could not waiver between the two claims.

Q. Was it for the purpose of protecting Mr. Chatfield or Chatfield and Wilson in the purchase of the J. C. Johnston lode in case the J. C. Johnston location should not hold good?

A. I don't know that I had any conversation with Mr. Johnston; in fact, I am very confident that I had none with him. I supposed that it was put that way to keep him from going from one lode to the other.

Q. Your recital in the contract did contemplate an application for patent and possible adverse suits and also contemplated a suit to quiet title?

A. Well, it may have been that, a suit to quiet title, but the way that Mr. Chatfield stated to me at the time that he requested me to draw the deed, he told me that he wanted me to draw a con-
417 tract wherein he acquired title to the whole property, and that if he did that he was to give Johnston one-eighth back.

Q. Was any suit brought by you or your partner to quiet title?

A. I think not.

Q. What legal services were performed by you as a consideration for the one-eighth which you received?

A. Well, there was applying for patents, there were consultations with Mr. Chatfield, and such incidental services as we were requested to perform.

Q. Did Mr. Johnston promise to give you or did he give you a one-eighth interest in the Johnston lode?

A. No, sir; I had nothing to do with Mr. Johnston. Mr. Chatfield had been our client for two or three years; we had done all his legal business, and whatever we did was for Mr. Chatfield, as far as I understood it. I know that I never had any conversation with Mr. Johnston that would raise any suspicion in my mind that we were in any way employed by him.

By consent of counsel the further taking of testimony is hereby continued until Friday, the 27th day of April, A. D. 1888, at 10 o'clock a. m.

JOHN W. WEBSTER, *Examiner.*

FRIDAY, *April 27th*, 1888.

Pursuant to the foregoing continuance, parties appeared at this time by their respective counsel.

Q. I want to ask you, Mr. Sayer, to what extent the J. C. Johnston mine and the Chatfield mine are being worked.

A. From my best understanding, there are thirty or forty men being worked there.

Q. Do you know about how much ore is being taken out
418 or of what grade?

A. I think about ten tons a day of from forty to seventy ounces of silver per ton.

Q. Is the mine paying dividends?

A. I think that it has paid two dividends during the last six months of five cents per share; that is about as near as I can recollect.

Q. I suppose Mr. Johnston has not had any benefit of any of those dividends, has he?

A. Not that I am aware of.

Q. I think you mentioned another stock book which was in use before the increase of the capital stock. Have you that book?

A. I think I have it at Leadville. I haven't it here. It was the original book containing the certificates of stock.

Q. And there were stubs showing to whom the stock was issued?

A. Yes, sir.

Q. Now, referring again to this contract introduced in evidence, the contract between Johnston and Chatfield which was drawn by you—I understand it was done at Chatfield's request—that contract refers to certain legal proceedings to be instituted by Chatfield for the vesting of the title in him. I will ask you whether you were employed by Chatfield or by Johnston or by anybody to bring those legal proceedings mentioned by that contract.

A. We were never employed by Mr. Johnston in any way for any purpose.

Q. What I want to get at is, were you the attorneys to bring those proceedings?

A. We were retained as Mr. Chatfield's attorneys at the time to do whatever was necessary to do—to attend to whatever legal proceedings he had, whatever might arise.

Q. And it was for those services—the bringing of those legal proceedings and attending to any other legal work for Chatfield
419 or the company—that you were to receive and did receive one-eighth of that property and afterwards one-eight- of the stock?

A. Yes, sir; for services as Mr. Chatfield might require.

Q. Was it at the time of the execution of that contract and of the execution of the deed from Johnston to Chatfield that the bargain was made whereby you got one-eighth of the property?

A. Well, Mr. Chatfield had had some talk with me before that. He mentioned that in case he should purchase this property from Johnston he would want us to attend to the legal business, and that he wanted to give us an interest in the property instead of money.

Q. Was that matter consummated at that time, so far as the transfer of the interest to you was concerned?

A. That was the understanding as I had it at the time that the purchase was made, that we should do whatever law work was necessary to do.

Q. When you and Mr. Thomson made the deed over to W. J. Wilson of your interest in the Smuggler, reserving one-eighth for yourselves, was that one-eighth reserved as your property, whether it represented the Smuggler or Johnston?

A. I think I drew that deed at the suggestion of Mr. Thomson, and he was the member of our firm who had the understanding, whatever it may have been. As a matter of fact, he did very nearly all the legal business connected with this outfit. I was attending to various branches of the business connected with our law practice and he generally attended to all mining cases. I had very little to do with his transaction.

Q. Now, as a matter of fact, did you or did you not know that the

eighth interest that you got by agreement from Chatfield was
420 an interest which Chatfield took from Johnston without any consideration, except certain promises which he made for you to perfect the title to the Johnston and defend the title of the Johnston as against all adverse claims?

A. No; I don't know anything of that sort.

Q. Can you swear that Chatfield had paid any consideration for that eighth interest to Johnston or anybody?

A. No, sir; I was not present at the time that they had the agreement, and I can't swear to it.

Q. Have you read the answer of the Standard Mining Co. in this case?

A. I have not.

Q. There are certain suits referred to in that answer as having been brought, I think, on the 7th or 8th day of May, 1881—one an adverse suit and one a suit in equity between certain claimants to the Smuggler No. 2 and the claimant of the J. C. Johnston—and I want to ask you whether those suits are the suits referred to in the record entry of the Fulton Mining Company to which your attention was called yesterday as suits in which Mr. Holden represented the parties plaintiff and adverse claimants against the Fulton Mining Company.

A. That I cannot say. As a matter of fact, I never had anything personal to do with those suits that I am aware of.

Q. Didn't your firm appear as attorneys for defendants in those suits?

A. For the Fulton Mining Company?

Q. Yes, sir.

A. Unless I could see the papers I could not exactly tell what the suits were about.

Q. You are not able to say, then, whether or not those suits when dismissed were dismissed in pursuance of the agreement referred to in the record books of the Fulton Mining Company, in pursu-
421 ance of which Holden got 37,500 shares and certain suits were to be dismissed. You are not able to say whether those suits were of the number mentioned there?

A. No, I am not. I remember there were three or four suits around

Q. I think you mentioned, Mr. Sayer—that you said that Anderson, who held the title to the Johnston lode for a time, was cashier in some bank in Kansas City. Has Mr. Holden any connection with that bank; so you know?

A. I don't know whether he has or not. I think it is the National Bank of Kansas City.

Q. Has Mr. Holden any connection with that bank?

A. I am not aware whether he is or not. He may be a stockholder; I have never heard of his being an officer. I cannot connect him with it.

Q. You answered one of my questions as follows: "I did not know at the time that I drew the contract but what a suit would be brought to quiet the title, and I think it was the intention to apply

for a patent, and it was understood that we would be adversed or that there would be some objection or protest, and I drew the contract as Chatfield told me." Now, I will ask you whether it turned out, as a matter of fact, that you were adversed in your application for a patent.

A. That is, of the Johnston lode?

Q. Yes, sir.

A. Well, I am not positive about that.

Q. You are not?

A. No.

Q. But you are positive about an adverse was expected at that time.

A. No, I only knew in a general way that there was some litigation of some character threatened, and I only know that from what Chatfield told me.

Q. Was that adverse or litigation expected from the claim-
422 ants of the Smuggler No. 2 or from other parties?

A. Well, that I can't swear about.

Q. You can't say as to that?

A. I will not swear about that.

Q. Did you have anything to do with the making of the application for patent to the J. C. Johnston premises?

A. I usually drew up the applications for a patent that were around the office. I can't remember whether I drew that or not.

Q. But you remember there was an application for a patent made?

A. Yes, sir.

Q. You don't remember whether that was adversed or not?

A. I am not positive about that; my impression is that it was.

Q. That it was adversed?

A. Yes, sir.

Q. I will ask what other property the Standard Mining Company owns besides the J. C. Johnston and Chatfield claims, if any.

A. I am not aware that they own any besides that unless it is the tools and machinery connected with the claims.

Q. And it is the same property owned by the Fulton Mining Co. and transferred by that company to the Standard?

A. Yes; it was transferred to Mr. Anderson from the Fulton Mining Company. They transferred it to Mr. Anderson and he to the Standard Mining Company.

Q. That is, in the manner you have already stated?

A. Yes, sir.

Q. I want to ask if you have had any estimates recently of the amount and value of ore in sight in the territory of the Standard Mining Company.

A. I don't know that I have.

Q. Have you any idea of what it is?

A. No, sir—that is, I can say I have some idea, but there is no very large quantity of ore in the mine that would pay any profit or any considerable profit for working it. I have heard
423 various persons make estimates that it was a good mine, but

the efforts to get dividends out of it do not seem to be productive of large results.

Q. Now, in the way of tonnage, I will ask you to state approximately the number of tons that are supposed and in sight on the mine.

A. Well, that would be a guess—that is, I take it for granted you are asking the question as to the amount to be shipped.

Q. Yes.

A. That would be a guess difficult to make with any approximation of correctness.

Q. Can you give the approximate measure of the amount of development of ore bodies?

A. No, sir.

Q. Are those various levels and drifts shown on this plat here run on ore?

A. I think that the comparative amount of the drifts that are run on ore were run—that is, most of it is in either absolutely barren ground or ground that it would not pay to ship the ore at all, and there is a great deal there. It is lime rock that would go much under $15.00 a ton.

Q. You don't meant to be understood that the mine is not a pay mine now?

A. No, sir; but I wish to be understood to say that it is not a mine that yields any large dividends.

Q. Can you give approximately the extent and position of the various stopes in which mineral has been taken from the mine?

A. I could not.

Cross-examination by Mr. THOMSON:

Q. Mr. Sayer, when did you first see Mr. Johnston?

A. I think it was in the summer of 1880.

Q. Where?

A. At the Windsor hotel.

Q. What place?

A. In the city of Leadville.

Q. How did it come about that you saw him at that time
424 at that place?

A. Mr. Chatfield wanted me to go up to his room, and he said to me that he had some mining——

Q. That Chatfield had?

A. That Mr. Johnston had some mining property that he wanted to sell, and wanted me to go up there with him in his room.

Q. Whose room?

A. Mr. Johnston's room. Mr. Johnston was up there lying on the bed with his foot propped up on a pillow, and Mr. Chatfield told me that he had got shot through the foot. Mr. Johnston told me that he wanted to go down to Denver as soon as he could because he was afraid of erysipelas.

Q. Well, what did Mr. Johnson, Mr. Chatfield, and yourself talk about at that time?

A. We had a talk for a few moments there. Mr. Chatfield said Mr. Johnston had some mining property to sell over at Aspen, and he wanted to ask me if he was safe in buying it—that is, if he, Chatfield, was safe in buying it. We were there a short time, and it came around to the point that Mr. Chatfield told me that if he did buy it that he wanted to make some arrangement to give our firm an interest in it for looking after the legal services connected with it, and I told Mr. Chatfield that I didn't know, and told him that you generally conducted——

Q. Who?

A. Mr. Thomson. Mr. Thomson generally attended to all the mining business connected with our firm, and that I preferred to have him see Mr. Thomson and talk the matter over with him; that I didn't know whether Mr. Thomson would be willing to take an interest in the property for his services or not.

Q. Was that the substance of the conversation at that time?

A. Yes, sir.

425 Q. Then no arrangement was made at that time as to whether or not Thomson & Sayer should take an interest?

A. No, sir.

Q. Were any papers drawn at that time at all?

A. None whatever.

Q. I will ask you whether the bond for the deed which was drawn by Sam. Browne from Johnston to Chatfield had been made at that time.

A. No, sir.

Q. In October, 1880, you were city attorney at Leadville, were you not?

A. I was.

Q. And the day of the execution of the deed from Johnston to Chatfield you did not come to the office until after you were through with your business as city attorney, did you?

A. No, sir.

Q. About what time of the day was that?

A. I think about half past ten or eleven.

Q. When you came to the office that day, who did you find in the office?

A. I found Mr. Chatfield and Mr. Johnston and Mr. Thomson.

Q. I will ask you if immediately after coming into the office I did not instruct you to draw a deed from Mr. Johnston to Mr. Chatfield for Mr. Johnston's entire interest in the J. C. Johnston mining claim.

A. You did.

Q. Also a deed from Mr. Johnston to Thomson & Sayer for his interest in the Smuggler No. 2 mining claim?

A. I remember you so instructed me.

Q. Did you draw those deeds?

A. I did.

Q. Were you a notary public at that time, Mr. Sayer?

A. Yes, sir; I was.

Q. Did you acknowledge those deeds?

A. I think I did.

Q. I will ask you if immediately upon the execution of
426 those deeds and the acknowledgment of them Mr. Johnston and Mr. Chatfield did not leave the office.

A. My recollection is that they did.

Q. I will ask if they did not leave those deeds in the office.

A. I think they did.

Q. I will ask you if those deeds have not been in our custody ever since, except while at Gunnison for record.

A. I have no recollection of their being out of our possession except when they went over for record.

Q. Was there any arrangement made on that morning or prior to or at the time of the executiou of those deeds for Mr. Johnston to return to the office again?

A. No, sir.

Q. I will ask you when you heard and from whom that a contract was desired between Chatfield and Johnston.

Objected to by complainant's counsel as not proper cross-examination, and it is understood that this objection shall go to all questions about the contract for the purpose of saving the reiterating of that objection, and it is also objected — as leading.

A. Mr. Chatfield came to the office the same afternoon and requested me to draw a contract.

Q. Was that the first you had heard that a contract of that kind was wanted?

A. It was.

Q. At whose dictation or upon whose instructions as to its contents did you draw that contract?

A. I. W. Chatfield's.

Q. I will ask you, Mr. Sayer, if you are willing to swear of your own knowledge that the organization of the Fulton Mining Co. or of any mining company to work these claims was contemplated or suggested until after Dr. Dunscombe came to Leadville and
427 demanded a settlement of his claims against the ground covered by the Johnston claim.

Objected to by complainant's counsel as not proper cross-examination.

A. I have no recollection of ever hearing of it until Dr. Dunscombe came to Leadville.

Q. I will ask you, Mr. Sayer, if the purpose of the formation of the company was not in order to settle conveniently with Dunscombe his adverse claims against the property.

Objected to by complainant's counsel as not proper cross-examination.

A. I think it was; at least I understood it that way after I had a conversation with Mr. Thomson.

Q. Now, Mr. Sayer, when the proposition was submitted by Mr. Holden to the Fulton Mining Co. to settle and adjust the claims of

the parties he represented, I will ask you if the amount of stock issued to him for those parties and the amount which is provided—which was provided to be divided among the old stockholders—did not exhaust the original treasury stock.

A. I think it did substantially or very nearly exhaust it.

Q. I will ask you if the increase of the capital stock of that company 25,000 shares was not for the purpose of creating a working capital to develop the mine.

A. Yes, sir; that was the intention.

Q. I will ask you what was done with that stock—that 25,000 shares of increase—as a matter of fact.

A. Most of it was sold for working capital and to derive funds to work the property with.

Q. How was the money realized from the sale of the stock applied?

428 A. Towards working the mining premises.

DAN'L SAYER.

Subscribed and sworn to before me this 28th day of April, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

Thereupon and by consent of counsel for the respective parties the further taking of testimony in this cause was adjourned until the 8th day of May, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

And thereupon, on Tuesday, the 8th day of May, A. D. 1888, said parties appeared pursuant to adjournment as before; whereupon the following proceedings were had:

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States within and for the District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants.

The following statement of facts is hereby agreed upon as true, and the same is to be considered and used in evidence in this cause, viz:

(1.) That the Standard Mining Company of Kansas City,
429 at and before the time it sought to acquire title from W. J. Anderson of the J. C. Johnston Lode mining claim mentioned in the bill of complaint herein, by deed from W. J. Anderson bearing date the 17th day of June, 1887, had actual notice and knowledge of the two suits theretofore brought and dismissed—one in the United States circuit court for the district of Colorado, brought September, 1885, by the complainant herein against the defendant The

Fulton Mining Company and others, and one in the district court within and for Pitkin county, Colorado, brought August, 1886, by the complainant herein against the defendant The Fulton Mining Company and others, to recover an undivided one-fourth interest in said J. C. Johnston lode and premises, said suits being for substantially the same relief, and that said defendant, The Standard Mining Company of Kansas City, at and before said 17th day of June, 1887, had full knowledge and notice of the contents of the bill of complaint in said cause brought in the United States circuit court in September, 1885; which bill of complaint, it is agreed, shall be introduced in evidence in this cause by the defendant The Standard Mining Company of Kansas City.

And, further, that the defendant Howard M. Holden and said Standard Mining Company of Kansas City, on and before said 17th day of June, 1887, had actual notice and full knowledge of certain claims and suits mentioned in the records of the Fulton Mining Company in its record book which is in evidence, said entry bearing date of the 25th day of April, 1882, and that said suits were two suits which were brought in the United States circuit court for the district of Colorado on or about the 7th day of May, 1881, by certain claimants to the Smuggler No. 2 against the Fulton Mining Company and others claiming title to the J. C. Johnston Lode mining claim, and are the same suits mentioned in the bill of com-
430 plaint and in the answer of the Standard Mining Company of Kansas City; and also two certain other suits pending in the district court of said Pitkin county brought by certain claimants of the Kansas City Lode claim against the Chatfield Lode claim, adjoining said J. C. Johnston mining claim or lode, all of which suits were controlled by said Holden and were dismissed by settlement and compromise, as recited in said record entry of said Fulton Mining Company.

(2.) That said Standard Mining Company of Kansas City is the successor in interest of the defendant The Fulton Mining Company, owning and working the same property, and that said Standard Mining Company paid no consideration for said J. C. Johnston Lode claim except to issue its stock to the shareholders of the Fulton Mining Company according to their several shares and interest; also that the defendant W. J. Anderson paid no consideration for said J. C. Johnston claim when the same was conveyed to him, and was only an agent and trustee for said Fulton Mining Company and said Standard Mining Company during the time that said Anderson held said title.

(3.) That the defendant W. J. Wilson was jointly and equally interested with the defendant I. W. Chatfield in the purchase from the complainant of the interest in the said J. C. Johnston lode and premises, and said Chatfield in said purchase was the agent of said Wilson as to the purchase of one-half of the interest acquired by said Chatfield in said purchase, and that said Wilson furnished and paid one-half of the purchase price, to wit, the sum of six hundred dollars, at the time of said purchase.

431 (4.) That the map of the surface boundaries and underground workings of said J. C. Johnston claim and of the Chatfield claim adjoining said J. C. Johnston claim, made by D. G. Miller and verified by his affidavit, may be used in evidence in this cause, and that said affidavit shall be read and considered as the testimony and deposition of said Miller.

WILSON & STIMSON & HUGH BUTLER,
Attorneys for Complainant.
CHAS. I. THOMSON, *Attorney for Defendants.*

J. C. JOHNSTON, recalled on his own behalf, testified as follows:

Direct examination by Mr. WILSON:

Q. (Handing witness papers marked E, F, G.) I would ask you, Mr. Johnston, to examine these two certified copies of complaints, and also the stipulation, and state whether or not you ever heard of those suits.

Objected to by defendants' counsel as irrelevant and incompetent.

A. I never heard of those suits until I read over Mr. Thomson's admitted testimony here the other day.

Q. Do you refer to the stipulation of facts he signed with us the other day?

A. That is the stipulation. I never heard of these suits—the purport of the suit—which these copies represent, not until I read Mr. Thomson's evidence or admitted evidence; never heard of the suits.

Q. (Handing witness papers marked H, I, J, K, and L.) Now, I will ask you the same question concerning these other suits, the
432 suits mentioned in these papers. When did you first learn of those suits?

A. I stated in my direct evidence the other day about the time that I learned of these suits through Judge Northrup, my attorney at that time. It was some time during the spring or summer of 1885, I think.

Q. Now, referring again to these two suits in the State court which appear to be adverse suits on the part of the claimants of the Smuggler No. 2 and the claimants of the so-called Kansas City lode against the Chatfield lode upon its application for a patent, did you ever employ Messrs. Thomson & Sayer or any other attorneys to represent you in this case?

A. No, sir; never employed anybody; never heard of those suits.

Q. You were never called upon by any one to testify anything in those suits?

A. No, sir.

Q. Never consulted in any way with reference to the disposition of those suits?

A. No, sir; never had any knowledge of the suits in any way, shape, or manner until I read it here the other day in Mr. Thomson's admitted evidence.

Q. I will ask you whether or not when those suits in Pitkin county were commenced in the spring or summer of 1881 the Kansas City

mining claim mentioned in this complaint in cause No. 16 was a valid, existing mining claim.

A. Do you mean the Kansas City?

Q. Yes.

A. I could not say whether it was or not. We did the work on it in 1880 and worked it up to the fall, until August, 1880. I worked the mine, but whether or not it was a valid location I do not know.

Q. Did you do any work on it *im* 1881?

A. No, sir; I did not.

Q. Was there any work done — it in 1881?

433 A. Well, there was work done through the long tunnel that was commenced on the Kansas City ground, but I do not think there was any work done on the mine. I think the tunnel was driven on the mine in 1880 when I was there and there was an incline shaft started towards the end of the claim, and I don't know whether it was worked in 1880 or not.

Q. Did you ever relocate your interest in the Kansas City claim?

A. No, sir.

Q. Were any proceedings ever taken to forfeit your interest in that claim?

A. Not that I ever heard of.

Q. Were you interested in that claim in the same manner that your partners, Dunscombe, Seaver, and Atchison, were?

A. Under the original location I had one-fourth interest in it with the other parties. I think the record shows that Mrs. Dunscombe and Mrs. Seaver had three-eighths or three-fourths and I held the other quarter.

Q. You never made any relocation of the Kansas City interest as you did of the Smuggler 2, did you?

A. No, sir.

Q. So that your interests remained the same in that claim as it did under the original grub-stake contract?

A. Yes, sir; at the time that I sold to Chatfield and Wilson I sold an undivided interest, and afterwards Chatfield refused to put up the money in the spring of 1881 to work this property.

Q. When did you first hear of the Chatfield location?

A. Well, I don't believe I heard of the Chatfield location until I came back from Wood River, and that was in 1883.

Q. Then you did not know that the Kansas City ground had been relocated as the Chatfield in September, 1880, as this certifi-

434 cate shows (handing witness paper marked M)?

A. No, sir; I don't think I heard of the location until I came back from Wood River in 1883. I went over there in 1882, and came back in the summer or spring of 1883.

Q. Upon the settlement of these various suits, or since their settlement, have you ever received any stock of the Fulton Mining Company or any consideration of any kind?

A. No, sir.

Cross-examination by Mr. THOMSON:

Q. Mr. Johnston, you say that Chatfield purchased one-half of your interest in the Kansas City. By that you mean you made a bond for that interest, do you not?

A. Yes, sir; when I made the sale he took a bond.

Q. On that along with other properties?

A. Yes, sir.

Q. You never made any deed of that property in pursuance of that bond, did you?

A. No, sir; Mr. Chatfield was to put up so much money to do the assessment work on the property. I went over in the spring of 1881 and stopped in your office on my way over. When there Chatfield said that he didn't have the money and would not put up any money to do the assessment work.

Q. This bond you are speaking of is the same bond we have been talking about all along and that you have testified about?

A. Yes, sir; the same bond.

Thereupon the plaintiff, by his counsel, offered in evidence stipulation in cause No. 16 and 15 in the district court of Pitkin county, and also certified copy of complaints filed in said causes; to the introduction of which papers defendant, by its counsel, objected for the reason that they nor any of them are competent or rel-
435 evant or tend to sustain any issue in the case. Said papers are received and marked E, F, and G.

And thereupon the plaintiff offers in evidence the following papers, which are received and marked Exhibits "H" to "Z," inclusive, and from "A 1" to "K 1," inclusive.

It is stipulated by and between the parties in this cause that the following papers and documents may be received and treated as evidence in this cause without objection on account of their being copies, to wit, the map marked Exhibit "C 1;" also copy of the record of the stockholders and directors' meetings of the Fulton Mining Company, which is marked Exhibit "I 1;" also the copy of the stock register of the Fulton Mining Company, which is marked "J 1;" also copies of the stock-certificate book of the Fulton Mining Company from its organization until the date of the increase of the capital stock of the company; and it is also stipulated that the stock register in evidence shows the entire history of the company, so far as the stock is concerned, from that time down to the time that it sold its property.

And it is further stipulated that the letter from S. J. Hanna, register, dated September 29th, 1885, being the date of the issuance and delivery of letters patent for the J. C. Johnston claim to the Fulton Mining Company, shall be received and treated as evidence in this cause.

Plaintiff rests.

436 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

To the honorable the judge of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the examiners in chancery of said circuit court of the United States for the district aforesaid, by virtue of notices given by solicitor for complainant, under order of master, and duly served upon solicitor for complainant, copies of which are hereto annexed, and in accordance with the 67th rule of the Supreme Court and amendments thereto, do most respectfully certify and report unto your honor that John C. Johnston, John H. White, and Daniel Sayre, witnesses on behalf of complainant, were examined before me, who, previous to their respective examinations in this cause, were by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between John C. Johnston, complainant, and The Standard Mining Company of Kansas City *et als.*, defendants, in a certain suit or matter now pending and undetermined in said circuit court upon the pleadings filed therein; that the testimony of the said witnesses was taken and reduced to writing before me, and after the same had been so taken and reduced to writing the testimony of John C. Johnston and Daniel Sayre *were* read over to them respectively by me in their presence and in the presence of the counsel and parties who were in attendance before me, and therefore the same were subscribed and sworn to by them respectively, the oaths being administered by me, at my office, in Denver,
437 on the dates set forth in the jurats appended to the foot of the testimony of each witness, as noted herein, and that the testimony of the witness John H. White, taken by me as aforesaid, was signed by me as examiner under the 67th rule of the Supreme Court of the United States by virtue of the stipulation of counsel waiving signature hereto attached and to which for greater certainty I refer.

And I further certify and report unto your honor that in taking the testimony of witnesses in this cause complainant introduced in evidence before me deeds, papers, documents, and letters marked respectively Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," A 1, B 1, C 1, D 1, E 1, F 1, G 1, H 1, I 1, J 1, K 1, and which are herewith returned and made a part of the testimony in this cause and which were all the exhibits introduced in evidence before me by the respective parties or their counsel and are referred to their respective folios in the index hereto attached.

And I further certify and report that I have caused said testimony to be folioed consecutively from No. 1 to number — in red-ink figures on the left-hand margin thereof, and that the testimony was taken as above noted.

And I further certify that I am not an attorney, solicitor, or of

counsel for either of the parties to this suit or otherwise interested therein.

All of which is respectfully submitted.

JOHN W. WEBSTER,
Examiner U. S. Circuit Court.

Denver, Nov. 9th, '88.

438 *Examiner's Fees.*

378 folios testimony, at 20	75 60
5 days' attendance, at $3.00	15 00
Marking & filing exhibits, at 10	3 70
Administering 3 oaths, at 10	30
Total examiner's fees	$94 60

Paid by Charles S. Wilson, Esq., att'y for complainant.

JOHN W. WEBSTER, *Examiner.*

Denver, Nov. 9th, 1888.

Index to Testimony.

Witnesses:

John C. Johnston,	direct examination,	folio	3 to 125.
" " "	recalled,	"	148 " 155.
" " "	cross-examination,	"	155 " 232.
" " "	recalled, direct ex.,	"	363 " 373.
" " "	X examination,	"	373 " 375.
John H. White,	direct examination,	"	126 " 147.
Daniel Sayer,	" "	"	234 " 354.

Agreed statement of facts from folio 355 to 363.

Exhibits:

Exhibit A, offered in evidence at folio 11.
Exhibit- B & C, offered in evidence at folio 13.
Exhibit D, offered in evidence at folio 14.
Exhibit- E, F, & G, offered in evidence at folio 375.
Exhibit- H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, & Z, folio 375.

439 Exhibit A 1, B 1, C 1, D 1, E 1, F 1, G 1, H 1, I 1, J 1, K 1, folio 376.

37 exhibits. John W. Webster, examiner.

EXHIBIT A. John W. Webster, Examiner.

Doc't 6992, Book Z, page 317.

Know all men by these presents that John C. Johnston, Joseph W. Adair, and George A. Crittenden, the undersigned, have this fourth day of August, 1880, located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and

all subsequent acts and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the J. C. Johnston lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on each side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, 200 feet running S. 44° 30′ W. from center of discovery shaft and 1,300 feet running W. 44° 30′ E. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit and within the lines of said claim, in Roaring Forks mining district, county of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

440 Beginning at corner No. 1, southwest corner post of claim, thence N. 44° 30′ E., at 75 ft. a post, cor. No. 2, west center side line post of claim, and continued course 1,500 ft. to No. 3, northwest corner post of claim, whence b'rs ledg- of rocks on Mt. Maggle N. 18° 45′ W., whence peak on Maroon range b'rs S. 67° 10′ W.; thence S. 45° 30′ E. 300 ft. to post No. 4, N. E. corner post of claim, whence peak on Mt. Sopris b'rs N. 77° W., whence cliff on Aspin mt. b'rs S. 67° 45′ W.; thence S. 44° 30′ W. 750 ft. to a post, No. 5, east center side line of claim, and *and* continued course, in all 1,500 ft., to post No. 6, southeast cor. post of claim; thence N. 45° 30′ W. 300 ft. to post No. 1, the place of beginning.

The discovery shaft of this claim is situated on the northwest slope of Johnston mountain. John C. Johnston owns one undivided half of said claim, Joseph W. Adair owns one undivided one-fourth of said claim, and George A. Crittenden owns one undivided one-fourth of said claim. All b'r'ngs true var. 15° 30′ E.

J. W. ADAIR. [SEAL.]
G. A. CRITTENDEN. [SEAL.]
JOHN C. JOHNSTON. [SEAL.]

Said lode was discovered on the 4th day of August, A. D. 1880.
Attest: G. A. CRITTENDEN.

Date of location, August 4th, A. D. 1880.
Date of certificate, August 4th, A. D. 1880.

(Indorsed:) A. Certified copy. Location certificate on the J. C. Johnston mining claim of —, in — mining district, — county, State of Colorado.

STATE OF COLORADO, }
County of Gunnison, } *ss:*

I hereby certify that this location certificate was filed for record in my office at 9 o'clock a. m., Sept. 21st, 1880, and is duly recorded in Book 18, page 21.

SAMUEL B. HARVEY, *Recorder.*

Fees, $1.50.

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441 STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 6992 as the same appears upon the records of my office, in Book Z, page 317.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT B. John W. Webster, Examiner.

Doc't 6986, Book Y, page 62.

Know all men by these presents that I, John C. Johnston, of the county of Arapahoe and State of Colorado, am held and firmly bound unto Isaac W. Chatfield, of Lake county, Colorado, in the penal sum of five thousand dollars, lawful money of the United States; for the payment of which sum, well and truly to be made, *am* hereby bind myself and heirs, executors, administrators, and assigns firmly by these presents.

Witness my hand and seal this 14th day of September, A. D. 1880.

The conditions of the above obligation are such that whereas the above-bounden John C. Johnson has, on the day of the date hereof, sold to the said Isaac W. Chatfield the following-described property lying, being, and situate in the county of Gunnison and State of Colorado, to wit: One undivided one-quarter of the J. C.
442 Johnson lode, in Roaring Forks district, in said county; also one undivided one-half of my interest in the following lodes, to wit: The Kansas City lode, the Combination lode, the John Lilly and the J. C. lodes, situate in said county and district; also the undivided half of my interest in the Smuggler cad lode, in said county & district, for the sum of twelve hundred dollars, lawful money, which sum of money is to be paid to the said John C. Johnson, to be paid as follows: $100.00 cash, team at $350.00, or the balance in monthly payments of $100.00 per month, except the last payment, which shall be $150.00, and upon the payment of all of said money so to be paid, as hereinbefore mentioned, make, execute, acknowledge, and deliver unto the said Isaac W. Chatfield or to such person or persons as — shall designate a good and sufficient deed or deeds of all the foregoing property, showing a clear and perfect title, free from all incumbrances (except as against the United States). Now, if the said Isaac W. Chatfield shall fail to pay the said sum of money at the time aforesaid, and if the said J. C. Johnson shall well and faithfully perform the covenants herein, then this obligation to be null and void; otherwise to remain in full force and effect.

J. C. JOHNSON. [SEAL.]

STATE OF COLORADO, } ss:
Arapahoe County, }

Be it known that on this 14th day of September, A. D. 1880, before me, S. E. Brown, notary public, personally came John C. Johnson, to me known as the person described in and who executed the foregoing instrument of writing, and acknowledged the execution thereof to be his free act and deed for the uses and pur-
443 poses therein mentioned.

Given under my hand and seal this 14th day of September, A. D. 1880.

SAM'L E. BROWNE,
Notary Public.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stocman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 6986 as the same appears upon the records of my office in Book Y, page 62.

[SEAL.] Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

FRED. H. STOCKMAN,
County Clerk and Recorder.

(Indorsed:) B. Certified copy. No. 6986. Title bond. John C. Johnston to I. W. Chatfield.

STATE OF COLORADO, } ss:
Gunnison County, }

I hereby certify that this instrument was filed for record in my office at 9 o'clock a. m., Sept. 21st, 1880, and is duly recorded in Book 11, large, page No. 39.

SAM'L B. HARVEY, *Recorder,*
By J. R. HENKLE, *Deputy.*

Fees, $2.00.

Exhibit B.

444 EXHIBIT C. John W. Webster, Examiner.

Doc't 9955, Book Y, page 172.

This indenture, made the 12th day of October in the year of our Lord one thousand eight hundred and eighty between John C. Johnson of the county of Lake and State of Colorado, party of the first part, and J. W. Chatfield of the county of Lake and State of Colorado, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of twelve hundred ($1,200.00) dollars, lawful money of the United States of America, to him in hand paid by the said party of

the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns the following-described real estate and mining property to wit: All my right, title and interest in and to that certain lode lead ledge vein claim and mineral deposit known as and called the J. C. Johnstone lode, which lode is more particularly described in the location certificate thereof filed in the office of the county clerk and recorder of Gunnison county Colorado, on the 21st day of September A. D. 1880 in Book 18 L page 21. Said lode is situated in Roaring Forks mining district, county of Gunnison and State of Colorado. Together with all the dips, spurs and angles, and also all the metals, ore, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith
445 usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN C. JOHNSTON. [SEAL.]

Signed, sealed and delivered in presence of

——— ———.

STATE OF COLORADO, } ss:
Lake County, }

I, Daniel Sayer, a notary public in and for said county, in the State aforesaid, do hereby certify that John C. Johnston, who is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

[L. S.] Given under my hand and seal notarial this 12th day of October, A. D. 1880.

DANIEL SAYER,
Notary Public.

(Indorsed:) C. Certified copy. No. 9955. Mining deed. John C. Johnston to I. W. Chatfield.

446 STATE OF COLORADO, } ss:
County of Gunnison, }

Filed for record at nine o'clock a. m., Nov. 6th, A. D. 1880, in Book 15 (L), page 385.

L. B. HARVEY, *Recorder.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 9955, as the same appears upon the records of my office in Book Y, page 177.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT D. John W. Webster, Examiner.

Memorandum of an agreement made and entered into this 12th day of October, A. D. 1880, by and between I. W. Chatfield of the city of Leadville, county of Lake and State of Colorado, party of the first part and J. C. Johnston of the same place party of the second part, witnesseth:

The party of the first part for and in consideration of the sum of one dollar to him in hand paid, and for other good and valuable considerations to him moving from the party of the second part, doth hereby covenant and agree to and with the said party of the second part, that in the event of the party of the first part
447 prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part, against persons who claim adversely to him an interest in the following-described property to wit: The lode and mineral deposit known as and called the J. C. Johnston lode, situate lying and being in the Roaring Forks mining district Gunnison county, State of Colorado. That the party of the first part upon so acquiring the title legal and equitable to the said mine by means of the legal proceedings so about to be commenced doth hereby covenant and agree to and with the said party of the second part to convey to the said party of the second part an undivided one-eighth ($\frac{1}{8}$) interest in and to the said above-described lode, which shall be free and clear from all expense incidental to the litigation incident to said contemplated suit.

And the party of the second part for and in consideration of the covenants and agreements to be kept and performed as hereinbefore mentioned doth covenant and agree to and with the party of the first part upon having or receiving the title to an undivided one-eighth ($\frac{1}{8}$) interest in and to the said lode, to pay an undivided one-

eighth ($\frac{1}{8}$) part of the expenses which shall accrue in the development and opening the said above-described lode.

448 In witness whereof the parties hereto have hereunto subscribed their names and affixed their seals on the day and date first hereinabove written.

(Signed) ISAAC W. CHATFIELD. [L. S.]
(Signed) JOHN C. JOHNSTON. [L. S.]

STATE OF COLORADO, } ss:
County of Lake, }

I, Daniel Sayer, a notary public in and for said county, in the State aforesaid, do hereby certify that Isaac W. Chatfield and John C. Johnston, personally known to me to be the persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of October, A. D. 1880.

——— ———,
Notary Public.

A true copy, as exhibit- in the clerk's office, circuit court U. S., in cause No. 2244.

Teste:

[SEAL.] WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk.*

449 (Indorsed:) D. 2244. Circuit court U. S. I.W. Chatfield'-agreement with J. C. Johnston. Copy of agreement as exhibited in clerk's office, circuit court U. S. Exhibit D.

EXHIBIT E. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court Sitting within and for said County.

H. C. HOLLISTER, Pl'ffs,
vs.
ISAAC W. CHATFIELD *et al.*, Def'ts. } No. 15.

It is hereby stipulated that the cause above entitled be dismissed, each party paying their own costs.

TAYLOR & ASHTON, *Att'ys for Pl'ffs.*
THOMPSON, SAYRE & BLAKE,
Attorneys for Defendants.

Dated Leadville, Colorado, December 16th, 1882.

I, John M. Beach, clerk of the district court of Pitkin county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the stipulations filed in a certain causes lately pending in said court wherein H. C. Hollister *et al.* were plaintiffs and I. W. Chatfield *et al.* were defendants, docket Nos. 15, 16.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Aspen, in — county and State, this 5th day of May, A. D. 1888.

[SEAL.] JOHN M. BEACH, *Clerk*,
By S. W. MILLER, *Deputy Clerk*.

451 (Indorsed:) E. Nos. 15, 16. In the district court. H. C. Hollister *et al.*, plaintiffs, *vs.* Isaac W. Chatfield *et al.*, defendants. Stipulations.

EXHIBIT F. John W. Webster, Examiner.

STATE OF COLORADO, } *ss*:
County of Pitkin, }

In the District Court of the Fifth Judicial District, Sitting in and for said County.

H. C. HOLLISTER, EDWARD F. BROWN, BELLA R. Seaver, James E. Seaver, William C. Oburn, Elizabeth H. Acheson, Pl'ffs,
vs.
ISAAC W. CHATFIELD, JOHN C. JOHNSTON, and MARGARET A. DUNSCOMB, Defendants.
} Kansas City Lode *vs.* Chatfield Lode.

Complaint.

The plaintiffs above named complain of the above-named defendants and allege that on or about the 10th day of April, A. D. 1880,

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* ~~And it is mutually agreed that at the time of the sealing and delivery of these presents that all the title which appears of record in the name of J. C. Johnston or John C. Johnston is already vested in the said I. W. Chatfield, and the suit about to be brought by said Chatfield is for the recovery of a portion of the lode which does not appear on the record in the name of said Johnston.~~

Given under my hand and notarial seal this 12th day of October, A. D. 1880.

____ ____,
Notary Public.

A true copy, as exhibit- in the clerk's office, circuit court U. S., in cause No. 2244.

Teste:

[SEAL.] WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

449 (Indorsed:) D. 2244. Circuit court U. S. I. W. Chatfield'- agreement with J. C. Johnston. Copy of agreement as exhibited in clerk's office, circuit court U. S. Exhibit D.

EXHIBIT E. John W. Webster, Examiner.

STATE OF COLORADO, *County of Pitkin*, } *ss:*

In the District Court Sitting within and for said County.

H. C. HOLLISTER, Pl'ffs,
vs.
ISAAC W. CHATFIELD *et al.*, Def'ts. } No. 15.

It is hereby stipulated that the cause above entitled be dismissed, each party paying their own costs.

TAYLOR & ASHTON, *Att'ys for Pl'ffs.*
THOMPSON, SAYRE & BLAKE,
Attorneys for Defendants.

Dated Leadville, Colorado, December 16th, 1882.

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court Sitting within and for said County of Pitkin.

450 H. C. HOLLISTER *et al.*, Pl'ffs, } No. 16.
vs.
ISAAC W. CHATFIELD *et al.*, Def'ts. }

It is hereby stipulated that the cause above entitled may be dismissed, each party paying their own costs.

TAYLOR & ASHTON, *Att'ys for Pl'ffs.*
THOMPSON, SAYRE & BLAKE.
Attorneys for Defendants.

Dated Leadville, Colorado, December 16th, 1882.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, John M. Beach, clerk of the district court of Pitkin county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the stipulations filed in a certain causes lately pending in said court wherein H. C. Hollister *et al.* were plaintiffs and I. W. Chatfield *et al.* were defendants, docket Nos. 15, 16.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Aspen, in — county and State, this 5th day of May, A. D. 1888.

[SEAL.]

JOHN M. BEACH, *Clerk,*
By S. W. MILLER, *Deputy Clerk.*

451 (Indorsed:) E. Nos. 15, 16. In the district court. H. C. Hollister *et al.*, plaintiffs, *vs.* Isaac W. Chatfield *et al.*, defendants. Stipulations.

EXHIBIT F. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Fifth Judicial District, Sitting in and for said County.

H. C. HOLLISTER, EDWARD F. BROWN, BELLA R. Seaver, James E. Seaver, William C. Oburn, Elizabeth H. Acheson, Pl'ffs, } Kansas City Lode
vs. } *vs.* Chatfield Lode.
ISAAC W. CHATFIELD, JOHN C. JOHNSTON, and MARGARET A. DUNSCOMB, Defendants. }

Complaint.

The plaintiffs above named complain of the above-named defendants and allege that on or about the 10th day of April, A. D. 1880,

the hereinafter mentioned and described premises and grounds know known as the "Kansas City lode and vein mining claim," situate in Roaring Fork mining district, county of Pitkin, formerly Gunnison,
in the State of Colorado, then being part of the public min-
452 eral domain of the United States, was free and open to exploration, location, and purchase, entirely vacant, unclaimed, and unoccupied. Margaret A. Dunscomb, Bella R. Seaver, and John C. Jornston, each being then and there citizens of the United States over the age of twenty-one years, entered into and upon said premises and then and there began to explore and prospect and sink for mineral and veins, lodes, ledges, and deposits of mineral, and for that purpose then and there began to sink a discovery shaft upon said premises in the center thereof from the side lines of said Kansas City lode and vein mining claim, and continued to work in and upon said shaft in so sinking the same until they had reached more than ten feet in depth from the lowest part of the rim thereof at the surface, when said above-named parties discovered, uncovered, and disclosed in said shaft and upon said premises a lode, ledge, vein, or deposit of mineral in quartz and other rock in place bearing silver and other precious metals, having the top or apex thereof within the said lines of the said "Kansas City" lode and vein mining claim, as the same was afterwards marked and defined.

That having discovered and uncovered said lode, ledge, vein, or deposit of mineral in rock in place, as aforesaid, the said above-named discoverers on or about the 21st day of April, A. D. 1880, posted at the point of said discovery a plain sign or notice containing the name of said lode, to wit, the "Kansas City" lode, the name of said discoverers, the date of said location, and the date of said discovery.

That afterwards and after the discovery of said lode, ledge, vein, or deposit, and after posting said discovery notice as aforesaid, the said discoverers thereof marked and defined the surface boundaries
of said lode and vein mining claim by then and there
453 erecting at each corner and at the center of each side line thereof a good, substantial post or monument firmly set in the ground and hewed and marked on the side in towards said lode and vein mining claim.

That afterwards, to wit, and within three months after the discovery of said lode, ledge, vein, or deposit as aforesaid by said discoverers, they, said discoverers, then and there made, executed, and caused to be recorded in the office of the clerk and recorder of the county of Gunnison, wherein said "Kansas City" Lode premises were then located, a certificate of location of and for said above-named lode and vein mining claim, which certificate of location contained the name of said lode, to wit, the Kansas City lode, the names of the locators as above given, the date of location, the number of linear feet claimed on each side of the center of said discovery shaft on said lode or vein, and the general course of said lode or vein mining claim, as near as might be; also a description of said lode and vein mining claim by metes and bounds. For a more particular description of said "Kansas City" lode and vein mining

claim see the location certificate thereof or a certified copy of the same, which plaintiffs hereby ask and pray may be made a part hereof.

Said location certificate was, on the 8th day of July, 1880, duly recorded among the records of the clerk and recorder of said Gunnison county, in Book 8, at page 102.

Plaintiffs further allege and aver that the locators of said "Kansas City" lode and vein mining claim and their grantees, by mesne conveyances, duly made, executed, and acknowledged, conveyed all their right, title, and interest of, in, and to said "Kansas City" lode and vein mining claim to these plaintiffs, excepting such
454 interest, if any, as the said defendants, Dunscomb and Johnston, have therein, which said deeds of conveyance were duly recorded in the office of the clerk and recorder of said Gunnison county.

Plaintiffs further allege and aver that the said defendants, John C. Johnston and Margaret A. Dunscomb, claim to have an interest of, in, and to the said "Kansas City" lode, and refuse to be made parties plaintiff herein and for that reason they are made defendants.

The plaintiffs further allege and aver that by virtue of the discovery location and record of said "Kansas City" lode as aforesaid and the purchases and conveyances aforesaid they became vested with the title to and are the owners of all of said "Kansas City" lode and vein mining claim, except as to the interest, if any, that said Johnston and Dunscomb have therein, and that plaintiffs have the right to occupy, possess, and enjoy the same, subject only to the paramount title of the United States therein, by virtue of a full compliance with the laws of the United States and of the State of Colorado relating to mineral land.

Plaintiffs further allege and aver that on or about the 1st day of April, A. D. 1881, they were in the quiet and peaceable possession of said lode and vein mining claim, and, being so in the possession and enjoyment of the same, the defendants Isaac W. Chatfield did afterwards and on the day aforesaid wrongfully enter upon said premises and did wrongfully oust the plaintiffs therefrom, and have ever since wrongfully withheld and do still wrongfully withhold possession thereof, to the damage of these plaintiffs in the sum of five thousand dollars.

Plaintiffs further allege and aver that this action is brought in support of an adverse filed by them in the land office of the
455 United States at Leadville, Colorado, on the 31st day of May, A. D. 1881, against the application of the defendant Isaac W. Chatfield for a patent to the premises named and called by him the Chatfield lode or mining claim, and that the plaintiffs have necessarily expended for plats, abstracts, costs, and reasonable attorneys' fees in the preparation of said adverse the sum of two hundred and fifty dollars.

Wherefore plaintiffs pray judgment against defendants—

First. For the restitution of said premises, and that they may be decreed to be the owners of said lode and vein mining claim and be entitled to occupy and possess the same.

Second. For the sum of five thousand dollars damages for the detention thereof.

Third. For the further sum of two hundred and fifty dollars expenses incurred in the preparation and filing said adverse.

Fourth. For costs of suit.

TAYLOR AND ASHTON,
Attorneys for Plaintiffs.

Issuing of summons is hereby expressly waived, and the appearance of each of the above-named defendants is hereby entered, and it is further stipulated that we will file our answer or such pleadings as we desire for the defendants by the 20th day of July, A. D. 1881.

THOMPSON & SAYRE,
Att'ys for Def'ts.

Endorsed: No. 16. In the dist. court, Pitkin Co. H. C. Hollister *et al. vs.* I. W. Chatfield *et al.* Kansas City Lode *vs.* Chatfield Lode. Complaint. Filed June 23rd, 1881. S. J. Hanna, clerk. Taylor & Ashton, att'ys for pl'ffs.

456 STATE OF COLORADO, } *ss:*
County of Pitkin, }

I, John M. Beach, clerk of the district court of Pitkin county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the complaint in a certain cause lately pending in said court, wherein H. C. Hollister *et al.* were plaintiffs and I. W. Chatfield *et al.* were defendants, docket No. 16.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Aspen, in said county and State, this 4 day of May, A. D. 1888.

[SEAL.]

JOHN M. BEACH, *Clerk,*
By S. W. MILLER,
Deputy Clerk.

(Indorsed:) No. 16. F. H. C. Hollister *et al.*, plaintiffs, *vs.* Isaac W. Chatfield *et al.*, defendants. Certified copy of complaint.

EXHIBIT G. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Fifth Judicial District, Sitting in and for said County.

457 H. C. HOLLISTER, EDWARD T. BROWN, William C. Oburn, Bella R. Seaver, James E. Seaver, Elizabeth H. Acheson, Mame A. Underwood, and Selby Jones, Plaintiffs,
vs.
ISAAC W. CHATFIELD, MARGARET A. DUNSCOMB, Charles I. Thomson, Daniel Sayer, and William J. Wilson, Defendants.

Smuggler No. 2 Lode *vs.* Chatfield Lode.

Complaint.

The above-named plaintiffs complain of the above-named defendants and allege that on or about the ninth day of June, A. D. 1880, the hereinafter mentioned and described premises and grounds now known as the "Smuggler Two" lode and vein mining claim, situate in Roaring Fork mining district, county of Pitkin, formerly Gunnison, in the State of Colorado, then being part of the public mineral domain of the United States, *was* free and open to exploration, location, and purchase, entirely vacant, unclaimed, and unoccupied. Margaret A. Dunscomb, Belle R. Seaver and John C. Johnston, each being then and there citizens of the United States and over the age of twenty-one years, entered into and upon said premises, and then and there began to explore, prospect, and sink for mineral and veins, lodes, ledges, and deposits of mineral, and for that purpose then and there began to sink a discovery shaft upon said premises in the center thereof from the side line of the said "Smuggler Two" lode and vein mining claim, and continued to sink in and upon said shaft in so sinking the same until they had reached more than ten feet in depth from the lowest
458 part of the rim of said shaft from the surface, when said above-named discovere-s discovered, uncovered, and disclosed in said shaft and upon said premises a lode, ledge, vein, or deposit of mineral in quartz and other rock in place bearing silver and other precious metals, having the top or apex thereof within the side line of said Smuggler Two lode and vein mining claim, as the same was afterwards marked and defined.

That, having discovered and uncovered said lode, ledge, vein, or deposit of mineral in rock in place as aforesaid, the above-named discoverers, on or about the 19th day of June, A. D. 1880, posted at the point of said discovery a plain sign or notice containing the name of said lode, to wit, "The Smuggler Two" lode, the names of

the said discoverers above given, the date of said location, and the date of discovery.

That afterwards and after the discovery of said lode, ledge, vein, or deposit and after posting said discovery notice as aforesaid, the said discoverers thereof marked and defined the surface boundaries of said lode or vein-mining claim by then and there erecting at each corner and at the center of each line thereof a good, substantial post or monument firmly set in the ground, hewed, and marked on the sides in towards said lode or vein-mining claim.

That afterwards, to wit, and within three months after the discovery of said lode, ledge, vein, or deposit as aforesaid by said discoverers, they, said discoverers, then and there made, executed, and caused to be recorded in the office of the clerk and recorder in and for the county of Gunnison aforesaid, wherein said "Smuggler Two" lode premises were then located, a certificate of location of and for said above-named lode or vein mining claim, which certificate of location contained the name of said lode, to wit, "Smuggler Two" lode, the names of the locators, the date of location, the
459 number of linear feet claimed on each side of the center of the discovery shaft on said lode or vein, and the general course of said lode or vein as near as might be; also a description of said lode or vein mining claim by metes and bounds. For a more particular description of said "Smuggler Two" lode or vein mining claim see the location certificate or a certified copy thereof, which plaintiffs hereby ask and pray may be made a part hereof.

Said location certificate was, on the 8th day of July, 1880, duly recorded among the records of the clerk and recorder of said Gunnison county, in Book 8, at page 113.

Plaintiffs further allege and aver that the locators of said "Smuggler Two" lode and vein mining claim and their grantees by mesme conveyances, duly made, executed, and acknowledged, conveyed all their right, title, and interest in and to the said "Smuggler Two" lode and vein mining claim to these plaintiffs, excepting such interest, if any, as the said defendants, Charles I. Thompson, Daniel Sayre, and Wm. J. Wilson, have therein; which said deeds of conveyance were duly recorded in the office of the clerk and recorder of said county of Gunnison.

Plaintiffs further allege and aver that said Thompson, Sayre, and Wilson received whatever interest they have, if any, of, in, and to said "Smuggler Two" lode by and through one John C. Johnston, and, having failed to obtain the consent of said Thompson, Sayre, and Wilson to be made plaintiffs herein, they are for that reason made defendants.

Plaintiffs further allege and aver that said defendant, Margaret A. Dunscomb, claims to have an interest of, in, and to said "Smuggler Two" lode and refuses to be made a party plaintiff herein, and for that reason she is made a defendant.

460 And plaintiffs further allege and aver that by virtue of the discovery, location, and record of said "Smuggler Two" lode as aforesaid and the purchases and conveyances aforesaid they became vested with the title to and are the owners of all the said

"Smuggler Two" lode and vein mining claim, except as to the interest, if any, that said Thompson, Sayre, Wilson, and Dunscomb may have therein, and that plaintiffs have the right to occupy, possess, and enjoy the same, subject only to the paramount title of the United States therein, by virtue of a full compliance with the laws of the United States and of the State of Colorado relating to mineral land.

Plaintiffs further allege and aver that on or about the 1st day of April, 1881, they were in the quiet and peaceable possession of said lode and vein mining claim, and, being so in the possession and enjoyment of the same, the defendant Isaac W. Chatfield did afterwards and on the day aforesaid wrongfully enter upon said premises and did wrongfully oust the plaintiffs therefrom and have ever since wrongfully withheld and do still wrongfully withhold possession thereof, to the damage of these plaintiffs in the sum of five thousand dollars.

Plaintiffs further allege and aver that this action is brought in supposrt of an adverse filed by them in the land office of the United States at Leadville, in the State of Colorado, on the 31st day of May, 1881, against the application of the defendant Isaac W. Chatfield for a patent to the premises named and called by him the "Chatfield" lode or mining claim, and that the plaintiffs have necessarily expended for plats, abstracts, costs, and reasonable attorneys' fees in preparing said adverse the sum of two hundred and fifty dollars.

461 Wherefore plaintiffs pray judgment against the defendants:

First. For the restitution of said premises, and that they be declar- to be the owners of said lode and vein mining claim and be entitled to occupy, possess, and enjoy the same.

Second. For the sum of five thousand dollars damages for the detention thereof.

Third. For the further sum of two hundred and fifty dollars expenses incurred in preparing and filing said adverse.

Fourth. For costs of suit.

TAYLOR & ASHTON,
Attorneys for Plaintiffs.

Issuing summons is hereby expressly waived, and the appearance of each of the above-named d-fendants is hereby entered, and it is further stipulated that we will file our answer or such pleadings as we desire for each of the defendants by the 20th day of July, A. D. 1881.

THOMPSON & SAYRE,
Att'ys for Def'ts.

Leadville, Col., June 15th, 1884.

Endorsed: No. 15. In the dist. court, Pitkin Co. H. C. Hollister *et al. vs.* I. W. Chatfield *et al.* Smuggler Two lode *vs.* Chatfield lode. Complaint. Filed June 23rd, 1881. S. J. Hanna, clerk. Taylor & Ashton, att'ys for pl'ffs.

the said discoverers above given, the date of said location, and the date of discovery.

That afterwards and after the discovery of said lode, ledge, vein, or deposit and after posting said discovery notice as aforesaid, the said discoverers thereof marked and defined the surface boundaries of said lode or vein-mining claim by then and there erecting at each corner and at the center of each line thereof a good, substantial post or monument firmly set in the ground, hewed, and marked on the sides in towards said lode or vein-mining claim.

That afterwards, to wit, and within three months after the discovery of said lode, ledge, vein, or deposit as aforesaid by said discoverers, they, said discoverers, then and there made, executed, and caused to be recorded in the office of the clerk and recorder in and for the county of Gunnison aforesaid, wherein said "Smuggler Two" lode premises were then located, a certificate of location of and for said above-named lode or vein mining claim, which certificate of location contained the name of said lode, to wit, "Smuggler Two"
lode, the names of the locators, the date of location, the
459 number of linear feet claimed on each side of the center of
the discovery shaft on said lode or vein, and the general course of said lode or vein as near as might be; also a description of said lode or vein mining claim by metes and bounds. For a more particular description of said "Smuggler Two" lode or vein mining claim see the location certificate or a certified copy thereof, which plaintiffs hereby ask and pray may be made a part hereof.

Said location certificate was, on the 8th day of July, 1880, duly recorded among the records of the clerk and recorder of said Gunnison county, in Book 8, at page 113.

Plaintiffs further allege and aver that the locators of said "Smuggler Two" lode and vein mining claim and their grantees by mesme conveyances, duly made, executed, and acknowledged, conveyed all their right, title, and interest in and to the said "Smuggler Two" lode and vein mining claim to these plaintiffs, excepting such interest, if any, as the said defendants, Charles I. Thompson, Daniel Sayre, and Wm. J. Wilson, have therein; which said deeds of conveyance were duly recorded in the office of the clerk and recorder of said county of Gunnison.

Plaintiffs further allege and aver that said Thompson, Sayre, and Wilson received whatever interest they have, if any, of, in, and to said "Smuggler Two" lode by and through one John C. Johnston, and, having failed to obtain the consent of said Thompson, Sayre, and Wilson to be made plaintiffs herein, they are for that reason made defendants.

Plaintiffs further allege and aver that said defendant, Margaret A. Dunscomb, claims to have an interest of, in, and to said "Smuggler Two" lode and refuses to be made a party plaintiff herein, and for that reason she is made a defendant.

460 And plaintiffs further allege and aver that by virtue of the discovery, location, and record of said "Smuggler Two" lode as aforesaid and the purchases and conveyances aforesaid they became vested with the title to and are the owners of all the said

"Smuggler Two" lode and vein mining claim, except as to the interest, if any, that said Thompson, Sayre, Wilson, and Dunscomb may have therein, and that plaintiffs have the right to occupy, possess, and enjoy the same, subject only to the paramount title of the United States therein, by virtue of a full compliance with the laws of the United States and of the State of Colorado relating to mineral land.

Plaintiffs further allege and aver that on or about the 1st day of April, 1881, they were in the quiet and peaceable possession of said lode and vein mining claim, and, being so in the possession and enjoyment of the same, the defendant Isaac W. Chatfield did afterwards and on the day aforesaid wrongfully enter upon said premises and did wrongfully oust the plaintiffs therefrom and have ever since wrongfully withheld and do still wrongfully withhold possession thereof, to the damage of these plaintiffs in the sum of five thousand dollars.

Plaintiffs further allege and aver that this action is brought in supposrt of an adverse filed by them in the land office of the United States at Leadville, in the State of Colorado, on the 31st day of May, 1881, against the application of the defendant Isaac W. Chatfield for a patent to the premises named and called by him the "Chatfield" lode or mining claim, and that the plaintiffs have necessarily expended for plats, abstracts, costs, and reasonable attorneys' fees in preparing said adverse the sum of two hundred and fifty dollars.

461 Wherefore plaintiffs pray judgment against the defendants:

First. For the restitution of said premises, and that they be declar- to be the owners of said lode and vein mining claim and be entitled to occupy, possess, and enjoy the same.

Second. For the sum of five thousand dollars damages for the detention thereof.

Third. For the further sum of two hundred and fifty dollars expenses incurred in preparing and filing said adverse.

Fourth. For costs of suit.

TAYLOR & ASHTON,
Attorneys for Plaintiffs.

Issuing summons is hereby expressly waived, and the appearance of each of the above-named d-fendants is hereby entered, and it is further stipulated that we will file our answer or such pleadings as we desire for each of the defendants by the 20th day of July, A. D. 1881.

THOMPSON & SAYRE,
Att'ys for Def'ts.

Leadville, Col., June 15th, 1884.

Endorsed: No. 15. In the dist. court, Pitkin Co. H. C. Hollister *et al. vs.* I. W. Chatfield *et al.* Smuggler Two lode *vs.* Chatfield lode. Complaint. Filed June 23rd, 1881. S. J. Hanna, clerk. Taylor & Ashton, att'ys for pl'ffs.

STATE OF COLORADO, } ss:
County of Pitkin. }

I, John M. Beach, clerk of the district court of Pitkin county, in the State aforesaid, do hereby certify the above and foregoing
462 to be a true, perfect, and complete copy of the complaint in a certain cause lately pending in said court, wherein H. C. Holiater *et al.* were plaintiffs and I. W. Chatfield *et al.* were defendants; docket No. 15.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Aspen, in said county and State, this 4 day of May *4*, A. D. 1888.

[SEAL.] JOHN M. BEACH, *Clerk*,
By S. W. MILLER,
Deputy Clerk.

(Indorsed:) No. 15, G. H. C. Hollister *et al.*, plaintiffs, *vs.* Isaac W. Chatfield. Certified copy of complaint.

463 EXHIBIT H. John W. Webster, Examiner.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for said District.

To the judges of the circuit court of the United States for the district of Colorado, in the eighth circuit:

JAMES C. ACHESON, ELIZABETH H. ACHESON, and O. H. DEAN, Residents of Kansas City, in the State of Missouri, and Citizens of the State of Missouri, Bring This Their Bill
against
THE FULTON MINING COMPANY, EDWARD DUNSCOMB, I. W. Chatfield, W. J. Wilson, Daniel Sayer, Charles I. Thomson, Margaret A. Dunscomb, James E. Seaver, and Bella R. Seaver, Defendants, Whose Places of Residence *Is* Leadville, Colorado, and All of Which said Defendants are Citizens of the said State of Colorado.

And thereupon your orators complain and say that during the year 1880 and before the discovery and location of the "J. C. Johnston" lode hereinafter described the plaintift James C. Acheson, the defendant- Edward Dunscomb and James Seaver, and one A. L. Rauze entered into an agreement with one J. C. Johnston that he, said Johnston, should prospect for and, either alone or with other person or persons, discover and locate mining claims in Colorado for a certain period of time, which extended beyond, through, and during August and September, A. D. 1880, and that said Johnston should have, to wit, an undivided one-quarter of the interests and mining claims discovered or located by him or by him and any others that might be assisting him under said agreement;
464 that when the said J. C. Johnston lode was discovered and located said Johnston was working, operating, and prospect-

ing under said above-referred-to contract, except that said Ranze had withdrawn therefrom by consent of the other parties thereto; that in pursuanc- of said agreement said James C. Acheson furnished moneys and his proportion of the other necessary things to said Johnston with which to prospect, prosecute, and perform the matters and things he was to do under said agreement, and he, said Johnston, was using the same when said "J. C. Johnston" Lode mining claim was discovered and located; that said "J. C. Johnston" Lode mining claim was discovered and located by said J. C. Johnston while he was working under and in pursuance of said agreement, and that he caused the same to be located, one-half thereof in his own name, one-fourth thereof in the name of G. A. Crittenden, and one-fourth thereof in the name of J. W. Adair.

That it was a part of said agreement that three-fourths of all such mining claims and interests as said J. C. Johnston should discover or locate, either by himself or others, should be located in the names of Margaret A. Dunscomb, three-eighths; Bella R. Seaver, three-eighths, and that one-third of each such three-eighths should be for the use of the plaintiff Elizabeth H. Acheson, but your orators say that, in violation of said agreement, said "J. C. Johnston" Lode mining claim was located as above stated.

And your orators say that said locators located and held three-fourths of said mining claim in trust for the said Margaret A. Dunscomb, Bella R. Seaver, and Elizabeth H. Acheson, and that the grantees of said locators now hold whatever interest they
465 or any of them may have in trust for said last-named parties.

Your orators further say that on the 10th day of August, 1880, the said George A. Crittenden and Joseph W. Adair, who are the G. A. Crittenden and J. W. Adair who are joined with said J. C. Johnston as locators of said claim as above stated, made, executed, and acknowledged and delivered to the said James C. Acheson, under the name of J. C. Acheson, their certain deed of conveyance of that date, and thereby, for certain valuable considerations, granted, bargained, sold, conveyed, and quitclaimed unto the said James C. Acheson, by the name of J. C. Acheson, all their right, title, and interest in and to said "J. C. Johnston" mining claim; which said mining claim is described as follows, to wit:

Beginning at cor. No. 1, being same as cor. No. 1, "Chatfield" lode, a pine post 4" x 4" square, 4½ feet long, set 2 feet, dug and marked 1–1,436 feet, from which U. S. location monument No. 4 bears S. 49° 15' W.—

3,745.4 feet, and a ledge of rock on Aspen mountain bears S. 68° 37' W., and a mountain peak, name unknown, bears N. 60° 10' W., and a dead pine tree 12 in. dia., blazed and marked 1–1,436 feet, bears N. 34° 20' W. 20 ft., a dead pine tree 14 in. dia., blazed and marked 1–1,436 feet, bears S. 36° 30' W. 33.7 feet.

Thence from cor. No. 1 S. 45° 30' E. 300 ft. to cor. No. 2, a pine post 4" x 4" square, 4 ½ — long, and set two feet, dug and marked 2–1,436 ft.

Thence from cor. No. 2 N. 44° 30' E. 750 ft. to center stake and

1,500 ft. to cor. No. 3, a pine post 4″ x 4″ square, 4¾ ft. long, and set 2½ ft., dug and marked 3–1,436.

466 Thence N. 45° 30′ W. 300 ft. to cor. No. 4, same as cor. No. 4, "Chatfield lode," a pine post 4″ x 4″ square, 4½ ft. long, and set 2 ft., dug and marked 4–1,436, from which Snow Mass Mt. bears S. 83° 05′ W. and the mountain peak, name unknown, bears N. 88° 20′ E.

Thence S. 44° 30′ W. 750 ft. along the S. E. side line of the "Chatfield" lode to center stake, 1,500 ft. to cor. No. 1, place of beginning, containing 10.33 acres, more or less, mag. var. 14° 40′ E.

All in the county of Gunnison, State of Colorado.

Your orators further say that on the 12th day of October, 1880, the said John C. Johnston pretended to convey and quitclaim by min-ng deed all of his right, title, and interest in and to the said "J. C. Johnston" lode to the said defendant, Isaac W. Chatfield; but your orators aver that said Chatfield took no more by said deed that a one-fourth interest in said lode, and that any other or further interest which may have been conveyed by said deed said Chatfield took, held, and holds in trust for the said Margaret A. Dunscomb, Bella R. Seaver, and Elizabeth H. Acheson.

Your orators further say that on the 9th day of December, 1880, the said G. A. Crittenden and J. W. Adair pretended to convey and quitclaim by mining deed all their right, title, and interest in said "J. C. Johnston" mining cla-m to the defendant, The Fulton Mining Company, and that on the 14th day of December, 1880, the defendant I. W. Chatfield pretended to convey by quitclaim mining deed all his right, title, and interest in and to said mining claim to the said Fulton Mining Company.

Your orators further say that on the — day of ——, 1880, the defendants Edward Dunscomb, Isaac W. Chatfield, William J.

467 Wilson, Daniel Sayer, and Charles I. Thompson organized, or pretended to organize, the defendant company, The Fulton Mining Company, but your orators have not sufficient information on which to base a belief as to whether said corporation was legally organized or not, or as to whether it is a duly and legally organized corporation at this date, and for want of such information deny its existence as a corporation.

Your orators further say and aver that at all of the times in this complaint mentioned said defendants and all of them and their grantors had full knowledge of all the facts hereinbefore and hereinafter stated, and that the said The Fulton Mining Company, its officers and agents, when it took any and every pretended title deed and interest that it now claims to hold, own, or have in and to said mining claim, took the same with full knowledge of all such facts, and that it had had such knowledge before it paid any valuable consideration for said claim or any portion thereof, and that each and every grantee of either, any, or all of said locators of said claim knew and had full knowledge of all such facts at the time that they and each of them respectively took their deed to their pretended respective interests in said mining claim, and had such knowledge

before they or either or any of them ever paid or parted with any valuable consideration for said mining claim or any interest therein.

Your orators further say that the defendants Edward Dunscomb, I. W. Chatfield, J. W. Wilson, Daniel Sayer, and Charles I. Thompson have confederated together with the fraudulent and wrongful intent to cheat, wrong, and defraud your orators out of their
468 right, title, and interest in and to said "J. C. Johnston" mining claim, and as part of such confederation and conspiracy have organized or pretended to organize the said Fulton Mining Company as aforesaid, of which said company they and each of them are officers.

And that they procured as a part of the scheme to so wrong and defraud your orators the deed to be executed from said I. W. Chatfield to the said company, and also the deed from the said G. A. Crittenden and J. W. Adair to said company, and the deed from said John C. Johnston to I. W. Chatfield and the said Manning claim to be located as above stated.

Your orators further say that the defendant James E. Seaver and Bella R. Seaver, his wife, and the defendant Margaret A. Dunscomb are interested with your orators in said described mining claim adversely to the said defendant, The Fulton Mining Company, and other defendants, Edward Dunscomb, I. W. Chatfield, W. J. Wilson, Daniel Sayer, and Charles I. Thomson, who are officers and agents of said company, and to whom, your orators aver, all of the stock, franchises, and property of said pretended corporation belong, and that said defendants, James E. Seaver and Bella R. Seaver, his wife, and the said Margaret A. Dunscomb, are made defendants herein because their consent could not be obtained to be made plaintiffs.

Your orators further say that the legal title to ten thirty-seconds of said mining claim is in the plaintiff J. C. Acheson; that the legal title to five thirty-seconds thereof is in the defendant Bella R. Seaver; that the legal title of one thirty-second thereof is in the plaintiff O. H. Dean, and that the legal title to sixteen thirty-
469 seconds thereof, as shown by the records of Gunnison county, is in the defendant The Fulton Mining Company, if such company legally exists; but if such company does not legally exist, then the legal title to said sixteen thirty-seconds is in I. W. Chatfield.

But your orators aver that the plaintiff Elizabeth H. Acheson is the real, true, and equitable — of ten thirty-seconds of said mining claim, and the defendant Bella R. Seaver of five thirty-seconds, and the plaintiff O. H. Dean of one thirty-second, and the defendant Margaret A. Dunscomb eight thirty-seconds, and the defendant The Fulton Mining Company or I. W. Chatfield or the said J. C. Johnston of the other eight thirty-seconds.

And your orators aver that the said John C. Johnston is the true and equitable owner of the said last-referred-to eight thirty-seconds.

Your orators further say that the defendant The Fulton Mining Company has filed an application for a patent for said mining claim in the United States land office at Leadville, and that on the

8th day of April, 1881, and within the sixty days of publication for said patent the said James C. Acheson, on behalf of himself and your other orators herein, filed an adverse and protest against the issuance of a patent to said defendant company for said mining claim, and this action is brought in support of said adverse and protest.

Wherefore your orators pray your honors to grant your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants, commanding them to be and appear in
470 this honorable court on a day certain therein to be named, then and there to answer all and singular the premises—said answer not to be under oath—and to stand to, perform, and abide such further order, direction, and decree as may be made against them, and that on the final hearing of this suit for an order, judgment, and decree ordering, adjudging, and decreeing to who- said "J. C. Johnston" mining claim belongs and who are the real, true, and equitable owners thereof, and cancelling all such conveyances as have been made in fraud of the rights of your orators, and that the said defendant, The Fulton Mining Company, is not entitled to a patent for said claim, and for such other and fur-her relief as to your honors may seem just and equitable.

(Signed) TAYLOR AND ASHTON,
Solicitors for Plaintiffs.

(Endorsed:) No. 709. James C. Acheson *et al. vs.* Fulton Mining Company *et al.* Bill in equity. Filed May 7, 1881. (Signed) Edward F. Bishop, clerk. Taylor and Ashton, solicitors for pl'ff-.

A true copy.

Teste: WILLIAM A. WILLARD, *Clerk*,
[L. S.] By CHAS. W. BISHOP, *Deputy Clerk*.

(Indorsed:) H. Acheson & Dean *vs.* Fulton M. Co. *et al.* Bill of complaint. In equity.

471 EXHIBIT I. John W. Webster, Examiner.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States for said District.

JAMES C. ACHESON, ELIZABETH H. ACHESON, and O. H. DEAN, Complainants,
against
THE FULTON MINING COMPANY, EDWARD DUNSCOMB, I. W. CHATFIELD, W. J. WILSON, Daniel Sayer, Charles I. Thomson, Margaret A. Dunscomb, James E. Seaver, and Bella R. Seaver, Defendants.

The joint and several answers of The Fulton Mining Company, Edward Dunscomb, I. W. Chatfield, W. J. Wilson, Daniel Sayer, Charles I. Thomson, Margaret A. Dunscomb, James E. Seaver, and Bella R. Seaver, defendants, to the bill of complaint of James C. Acheson, Elizabeth H. Acheson, and O. H. Dean, complainants.

These defendants, now and at all times hereafter reserving to themselves and each of them all benefit and advantage and exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, severally answering, say that it is not true and they deny that during the year 1880 or at any other time the plaintiff James C. Acheson, the defendants Edward Dunscomb and James E. Seaver, and one A. L. Ranze entered into an agreement with
472 one J. C. Johnston that the said Johnston should prospect for and either alone or with other person or persons discover or locate mining claims in Colorado for any period of time whatever or at all. Defendants deny that said Johnston ever made any agreement with said Acheson, Dunscomb, Seaver, and Ranze or either or any of them such as the pretended agreement set forth in the complainants' said bill. Defendants deny that when the said J. C. Johnston lode was discovered or located said Johnston was working, operating, or prospecting under any contract whatsoever with the parties last aforesaid or either or any of them. Defendants deny that said James C. Acheson, in pursuance of said pretended agreement or in pursuance of any agreement or at all, ever furnished any moneys or any proportion of any necessary or unnecessary things to said Johnston with which to prospect or prosecute or perform any matters or things he was to do under said pretended agreement or any agreement.

Defendants deny that said Johnston was using any moneys or

things furnished by said Acheson when said J. C. Johnston Lode mining claim was discovered or located, and they deny that said J. C. Johnston Lode mining claim was discovered or located by said J. C. Johnston while he was working under or in pursuance of said pretended agreement or of any agreement whatsoever with the parties aforesaid or any or either of them.

Defendants admit that said J. C. Johnston lode was located one-half in the name of said J. C. Johnston and one-fourth thereof in the name of G. A. Crittenden and one-fourth thereof in the name of J. W. Adair, and defendants aver that the discovery of said lode was made by said Johnston, Crittenden, and Adair jointly.

473 Defendants deny that it was any part of any agreement to which said Johnston was a party that three fourths or any portion of any mining claims or interests which he might discover or locate either by himself or others should be located in the names of Margaret A. Dunscomb and Bella R. Seaver or in the name of either of them in any proportion whatever, or that any interest in any portion or proportion of any such claim or claims should be for the use of the plaintiff Elizabeth H. Acheson, and they deny that said J. C. Johnston lode was located in violation of any agreement whatsoever.

Defendants deny that said locators located or held any part of or interest in said mining claim in trust for said Margaret A. Dunscomb, Bella R. Seaver, and Elizabeth H. Acheson or any or either of them, or that the grantees of said locators ever did or do now hold any interest in trust for said parties or either or any of them.

And these defendants further say that they do not know and have never been informed, save by unreliable rumor and the said complainants' said bill, whether on the 10th day of August, 1880, or at any other time the said George A. Crittenden and Joseph W. Adair made, executed, acknowledged, or delivered to the said James C. Acheson under any name any deed of conveyance, or whether they ever granted, bargained, sold, conveyed, or quitclaimed unto said James C. Acheson any right, title, or interest in or to said J. C. Johnston mining claim, or whether any such pretended conveyance was made for any valuable consideration, and leave the complainants to make such proof thereof as they shall be advised is material.

474 Defendants say it is true that on the 12th day of October, 1880, the said John C. Johnston conveyed by mining — all of his right, title, and interest in and to the said J. C. Johnston lode to the said defendant Isaac W. Chatfield, and they aver that by said deed said Chatfield took an undivided one-half interest in said lode, and they deny that he took, held, or holds any interest which was conveyed by said deed in trust for any person or persons whomsoever.

Defendants say it is true that on the 9th day of December, 1880, the said G. A. Crittenden and J. W. Adair conveyed by mining deed all their right, title, and interest in said J. C. Johnston mining claim to the defendant The Fulton Mining Company, and that on the 14th day of December, 1880, the defendant I. W. Chatfield conveyed by

mining deed all his right, title, and interest in and to said claim to the said Fulton Mining Company.

Defendants say it is true that the defendant The Fulton Mining Company was organized as stated in said bill, and they aver that the same was legally organized under the laws of the State of Colorado, and was and is a duly and legally organized corporation.

Defendants deny that they or any or either of them ever at any time had or do now have any knowledge of the pretended facts of which they are charged in said bill with knowledge, and they deny that the said The Fulton Mining Company, its officers or agents, or any of them, when it took any of its title deeds or interests that it holds, owns, and has in and to said mining —, took the same with any knowledge whatever of any of said pretended facts, and deny that it had any such knowledge before it paid any valuable
475 consideration for said claim or that it has now any such knowledge, and defendants deny that any grantee of any of said locators of said claim ever had any knowledge of any such pretended facts.

These defendants deny that any of the defendants Edward Dunscomb, I. W. Chatfield, J. W. Wilson, Daniel Sayer, and Charles I. Thomson or any of them have ever confederated together with the fraudulent, wrongful, or any intent to cheat, wrong, or defraud the said complainants or any or either of them or any other person or persons out of any right, title, or interest in or to any mining claim or other property or thing, and they deny that they ever organized any mining company or procured any deed to be executed or mining claim to be located as a part of any confederation or conspiracy or as part of any scheme to wrong or defraud any person or persons whomsoever.

These defendants deny that the defendant James E. Seaver, by Bella R. Seaver, his wife, or in any other way or manner, or the defendant Margaret A. Dunscomb is interested with the complainants herein or adversely to the defendant The Fulton Mining Company and the other defendants or either or any of them, nor do all the stock, franchise, and property of said corporation belong to said other defendants.

These defendants deny that the legal or other title to any portion of said mining claim is or ever was in the plaintiff J. C. Acheson or the defendant Bella R. Seaver or the plaintiff O. H. Dean, but these defendants aver that the entire title, legal and equitable, to the whole of said J. C. Johnston lode and mining claim is in the defendants The Fulton Mining Company.

476 Defendants deny that either the plaintiff Elizabeth H. Acheson or the defendant Bella R. Seaver or the plaintiff O. H. Dean or the defendant Margaret A. Dunscomb is the owner, legal or equitable, of any interest in or portion of said mining claim.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto and not herein

and hereby well and sufficiently answered, confessed, traversed and avoided or denied is not true, to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) THE FULTON MINING COMPANY,
" EDWARD DUNSCOMB,
" I. W. CHATFIELD,
" W. J. WILSON,
" DANIEL SAYER,
" CHARLES I. THOMSON,
" MARGARET A. DUNSCOMB,
" JAMES E. SEAVER,
" BELLA R. SEAVER, *Defendants.*

(Signed) THOMSON, SAYER & BLAKE,
Solicitors for Defendants.

477 (Indorsed:) No. 709. James C. Acheson *et al. vs.* Fulton Mining Co. *et al.* Answer. Filed Oct. 5, 1881. (Signed) Edward F. Bishop, clerk. Thomson, Sayer & Blake, for defendants.

A true copy.
Teste: WILLIAM A. WILLARD, *Clerk*,
[SEAL.] By CHAS. W. BISHOP,
Deputy Clerk.

(Indorsed:) 1. Acheson & Dean *vs.* Fulton M. Co. *et al.* Answer. In equity.

478 EXHIBIT J. John W. Webster, Examiner.

UNITED STATES OF AMERICA, } *ss:*
State of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

EDWARD T. BROWN, ELIZABETH H. ACHESON, and WILLIAM C. OSBURN, Plaintiffs, *vs.* EDWARD DUNSCOMB, J. W. CHATFIELD, W. J. Wilson, Daniel Sayer, Charles I. Thomson, and The Fulton Mining Company, Defendants. } "Smuggler # 2 *vs.* J. C. Johnston."

Complaint.

The plaintiffs complain of the above-named defendants and allege—

That each of the said above-named pl'ffs are citizens of Kansas City, Jackson county, State of Missouri, and that the said defendant, The Fulton Mining Company, is a corporation duly organized and

existing under and by virtue of the laws of the State of Colorado, and that the officers of said defendant corporation and the other of said above-named defendants are each and all citizens of and residents of the State of Colorado, and that the controversy herein between said plaintiffs, citizens of the State of Missouri, and said defendants, citizens of the State of Colorado, is a controversy between citizens of different States.

Plaintiffs further allege that on the 9th day of June, A. D. 1880, the hereinafter mentioned and described premises and grounds now known as the "Smuggler Two" lode mining claim situate
479 in Roaring Fork mining district, in the county of Gunnison, in the State of Colorado, then being a part of the public domain of the United States of America, was free and open to exploration, location, and purchase, entirely vacant, unclaimed, & unoccupied. Margaret S. Dunscomb, Bella R. Seaver, and John C. Johnston, being then and there citizens of the United States and over the age of twenty-one years, entered into and upon said premises and then and there began to explore, prospect, and sink for mineral and veins, lodes, ledges, and deposits of mineral, and for what purpose then and there began to sink a discovery shaft upon said premises in the center thereof from the side lines of said mining claim hereinafter described, and continued to work in and upon said shaft in sinking the same until they had reached a depth of more than ten feet from the lowest point of the rim of said shaft at the surface, when the said above-named parties discovered, uncovered, and disclosed in said shaft and upon said premises a lode, ledge, vein, or deposit of mineral in quartz and other rock in place bearing silver and other precious metals, having the top or apex thereof within the side lines of the said "Smuggler 2" lode or mining claim, as the same was afterwards marked and defined.

That, having discovered and uncovered said lode, ledge, vein, or deposit of mineral in rock in place as aforesaid, the said above-named discoverers, on or about the 19th day of June, 1880, posted at the point of said discovery a plain sign or notice containing the name of said lode, to wit, "Smuggler No. 2," the names of the said discoverers, the parties last named, the date of said location, and the date of said discovery; that afterwards and after the
480 discovery of said lode, ledge, vein, or deposit and after posting said discovery notice as aforesaid the said discoverers thereof marked and defined the surface boundaries of said lode or mining claim by then and there erecting at each corner and at the center of each side line thereof a good, substantial post or monument firmly set in the ground and hewed and marked on the side in towards said lode claim..

That afterwards, to wit, within three months after the discovery of said lode, ledge, vein, or deposit as aforesaid by said discoverers, they, said discoverers, then and there made, executed, and caused to be recorded in the clerk and recorder's office in and for the county of Gunnison aforesaid, wherein said "Smuggler No. 2" lode premises are located, a certificate of location of and for said above-named lode and mining claim, which certificate of location contains the

name of said lode, to wit, the "Smuggler No. 2" lode, the name of the locators, and the date of location, the number of linear feet claimed on each side of the center of said discovery shaft on said lode, and the general course of said lode, as near as might be; also a description of said lode by metes and bounds. For a more particular description of said "Smuggler No. 2" lode or mining claim see the location certificate or a certified copy of the same, which plaintiff hereby asks may be made a part hereof.

Said location certificate was, on the 8th day of July, 1890, duly recorded among the records of the clerk and recorder of said county of Gunnison, in Book 8, at page 113. Plaintiffs further al-
481 lege and aver that the locators of said "Smuggler No. 2" lode or mining claim and their grantees, by mesne conveyances duly made, executed, and acknowledged, conveyed all their right, title, and interest in and to the said "Smuggler No. 2" lode or mining claim to these plaintiffs, wh-ch said deeds of conveyance were duly recorded with the said clerk and recorder of said county of Gunnison.

And plaintiffs further allege that by virtue of the discovery, location, and record thereof and the purchase and conveyance aforesaid the said "Smuggler No. 2" lode or mining claim became and is vested in the plaintiffs, and that plaintiffs have the right to occupy, possess, and enjoy the same, subject only to the paramount title of the United States therein by virtue of a full compliance with the laws of the United States and of the State of Colorado relating to mineral lands.

And plaintiffs further allege that on or about the 1st day of January, A. D. 1881, they were in the quiet and peaceable possession of the said lode mining claim, and, being so in the possession and enjoyment of the same, the defendants did afterwards and on the day aforesaid wrongfully enter upon said premises and did wrongfully oust the plaintiffs therefrom; and have ever since wrongfully withheld and do still wrongfully withhold possession thereof, to the damage of the plaintiffs in the sum of five thousand dollars.

Plaintiffs further allege that this action is brought upon an adverse filed by them in the land office of the United States at Leadville, State of Colorado, on the 8th day of April, A. D. 1881, against the application of the defendant for a patent to the premises named and called by them the "J. C. Johnston" lode or mining claim, and that plaintiffs have necessarily expended for plats,
482 abstracts, and costs and reasonable attorney's fees in preparing said adverse the sum of two hundred and fifty dollars.

Wherefore plaintiffs pray judgment against the defendants:

First. For the restitution of said premises, and that they may be decreed to be the owners and be entitled to occupy, enjoy, and possess the same.

Second. For the sum of five thousand dollars for the detention thereof.

Third. For the further sum of two hundred and fifty dollars, expenses incurred in preparing, making, and filing said adverse.

Fourth. For costs of suit.

(Signed) TAYLOR & ASHTON,
Att'ys for Plaintiffs.

(Endorsed:) No. 708. Edward T. Brown *et al. vs.* Edward Dunscomb *et al.* "Smuggler No. 2" *vs.* "J. C. Johnston." Complaint. Filed May 7th, 1881. (Signed) Edward F. Bishop, clerk. Taylor and Ashton, att'ys for pl'ffs.

A true copy.
Teste:
[L. S.] WILLIAM A. WILLARD, *Clerk*,
By CHAS. W. BISHOP, *Deputy Clerk.*

(Indorsed:) J. Brown, Acheson & Osburn *vs.* Dunscomb, Fulton M. Co., *et al.* Complaint.

483 EXHIBIT K. John W. Webster, Examiner.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

JAMES C. ACHESON *et al.*, Pl'ffs,
vs.
FULTON MINING COMPANY *et al.*, Def'ts. } No. 709.

This above-entitled action is to be dismissed, each party paying their own costs.

(Signed) TAYLOR & ASHTON,
Att'ys for Pl'ffs.
THOMSON, SAYER AND BLAKE,
Attorneys for Defendants.

Dated Leadville, Colorado, December 16th, 1882.

(Endorsed:) 709. Circuit court U. S. James C. Acheson *et al. vs.* The Fulton Mining Company *et al.* Stipulation to dismiss case. Filed Dec. 18, 1882. (Signed) Edward F. Bishop, clerk. Taylor & Ashton, for pl'ffs. Thomson, Sayer and Blake, att'ys for def'ts.

A true copy.
Teste:
[L. S.] WILLIAM A. WILLARD, *Clerk*,
By CHAS. W. BISHOP, *Deputy Clerk.*

(Indorsed:) K. Acheson *vs.* Fulton M. Co. *et al.* Stipulation for dismissal.

484 EXHIBIT L. John W. Webster, Examiner

UNITED STATES OF AMERICA } ss:
District of Colorado, }

In the United States Circuit Court of the Eighth Judicial District, Sitting in and for said District.

EDWARD T. BROWN, ELIZABETH H. ACHESON, William C. Osburn, Bella R. Seaver, and James E. Seaver, Plaintiffs,
vs.
MARGARET A. DUNSCOMB, I. W. CHATFIELD, W. J. Wilson, Daniel Sayer, Charles I. Thomson, and The Fulton Mining Company, Defendants.

"Smuggler Two" *vs.* J. C. Johnston.

Amended Complaint.

The above-named plaintiffs complain of the above-named defendants and allege that each of said above-named plaintiffs are citizens of Kansas City, Jackson county, in the State of Missouri, and that said defendant, The Fulton Mining Company, is a pretended corporation pretended to have been organized and existing under and by virtue of the laws of the State of Colorado, and that said Fulton Mining Company and the other of the said above-named defendants are each and all citizens of and residents of the State of Colorado, and that the controversy herein between said plaintiffs, citizens of the State of Missouri, and said defendants, citizens of the State of Colorado, is a controversy between citizens of different States.

485 Plaintiffs further allege and aver that on or about the 9th day of June, A. D. 1880, the hereinafter mentioned and described premises and grounds now known as the "Smuggler Two" lode and vein mining claim, situate in Roaring Fork mining district, Pitkin county, formerly Gunnison, in the State of Colorado, then being a part of the public mineral domain of the United States, was free and open to exploration, location, and purchase, entirely vacant, unclaimed, unoccupied. Margaret A. Dunscomb, Bella R. Seaver, and John C. Johnston, each being then and there citizens of the United States over the age of twenty-one years, entered into and upon said premises, and then and there began to explore, prospect, and sink for mineral and veins, lodes, ledges, and deposits of minerals, and for that purpose then and there began to sink a discovery shaft upon said premises in the center thereof from the side line of the said "Smuggler Two" lode and vein mining claim, and continued to sink in and upon said shaft in so sinking the same until they had reached more than ten feet in depth from the lowest part of the rim of said shaft from the surface, when said above-named discoverers discovered, uncovered, and disclosed in said shaft and upon said premises a lode, ledge, vein, or deposit of mineral in

quartz and other rock in place bearing silver and other precious metals, having the top or apex thereof within the side lines of the said "Smuggler Two" lode, vein, and mining claim, as the same was afterwards marked and defined; that, having discovered and uncovered said lode, ledge, vein, or deposit of mineral in rock in place as aforesaid, the above-named discoverers, on or about the 19th day of June, A. D. 1880, posted at the point of said discovery a plain
486 sign or notice containing the name of said lode, to wit, the Smuggler Two lode, the named of the said *said* discoverers above given, the date of said location, and the date of said discovery; that afterwards and after the discovery of said lode, ledge, vein, or deposit, and after posting said discovery notice as aforesaid, the said discoverers thereof marked and defined the surface boundaries of said lode and vein mining claim by then and there erecting at each corner and at the center of each side line thereof a good, substantial post or monument firmly set in the ground, hewed and marked on the sides in towards said lode and vein mining claim; that afterwards, to wit, and within three months after the discovery of said lode, ledge, vein, or deposit as aforesaid by said discoverers, they, said discoverers, then and there made, executed, and caused to be recorded in the office of the clerk and recorder in and for the county of Gunnison, wherein said "Smuggler Two" lode premises were then located, a certificate of location of and for said above-named lode and vein mining claim, which certificate of location contained the name of said lode, to wit, the "Smuggler Two" lode, the names of the locators, the date of location, the number of linear feet claimed on each side of the center of the discovery shaft on said lode or vein, and the general course of said lode or vein, as near as might be; also a description of said lode or vein mining claim by metes and bounds. For a more particular description of said "Smuggler Two" lode and vein mining claim, see the location certificate or a certified copy thereof, which plaintiffs hereby ask and pray may be made a part hereof. Said location certificate was, on the 8th day of July, 1880, duly recorded among the records
487 of the clerk and recorder of said Gunnison county, in Book 8, page 113. Plaintiffs further allege and aver that the locators of said "Smuggler Two" lode and vein mining claim and their grantees by mesne conveyances duly made, executed, and acknowledged conveyed all their right, title, and interest in and to the said "Smuggler Two" lode and vein mining claim to these plaintiffs, excepting such interest, if any, as the said defendants, Charles I. Thomson, Daniel Sayer, and William J. Wilson, defendants herein, have therein, which said deeds of conveyance were duly recorded in the office of the clerk and recorder of said county of Gunnison.

Plaintiffs further allege and aver that said Thomson, Sayer, and Wilson received whatever interest they have, if any, of, in, and to said "Smuggler Two" lode by and through one John C. Johnston, and, having failed to obtain the consent of said Thomson, Sayer, and Wilson to be made plaintiffs herein, they are for that reason made defendants.

Plaintiffs further allege and aver that said defendant, Margaret

A. Dunscomb, claims to have an interest of, in, and to said "Smuggler Two" lode, and refuses to be made party plaintiff herein, and for that reason she is made a defendant.

And plaintiffs further allege and aver that by virtue of the discovery, location, and record of said "Smuggler Two" lode as aforesaid and the purchases and conveyances aforesaid they became vested with the title to and are the owners of all of said "Smuggler Two" lode and vein mining claim, except as to the interest, if any, that said Thomson, Sayer, Wilson, and Dunscomb may have therein,
488 and that plaintiffs have the right to occupy, possess, and enjoy the same, subject only to the paramount title of the United States therein, by virtue of a full compliance with the laws of the United States and of the State of Colorado relating to mineral lands. Plaintiffs further allege and aver that on or about the first day of January, A. D. 1881, they were in the quiet and peac-able possession of said lode and vein mining claim, and, being so in the possession and enjoyment of the same, the defendants The Fulton Mining Company and Isaac W. Chatfield did afterwards and on the day aforesaid wrongfully enter upon said premises and did wrongfully oust the plaintiffs therefrom and have ever since wrongfully withheld and do still wrongfully withhold possession thereof, to the damage of these plaintiffs in the sum of five thousand dollars.

Plaintiffs further allege and aver that this action is brought in support of an adverse filed by Edward T. Browne, Elizabeth H. Acheson, and Wm. C. Oburn in the land office of the United States at Leadville, in the State of Colorado, on the 8th day of April, A. D. 1881, against the application of the defendant The Fulton Mining Company for a patent to the premises named and called by it the "J. C. Johnston" lode or mining claim, and that the plaintiffs have necessarily expended for plats, abstracts, costs, and reasonable attorneys' fees in preparing said adverse the sum of two hundred and fifty dollars.

Wherefore plaintiffs pray judgment against the defendants—

First. For the res-itution of said premises and that they be decreed to be the owners of said lode and vein mining claim and be entitled to occupy, possess, and enjoy the same.

Second. For the sum of five thousand dollars damages for the detention thereof.

489 Third. For the further sum of two hundred and fifty dollars expenses incurred in preparing and filing said adverse.

Fourth. For costs of suit.

(Signed) TAYLOR AND ASHTON,
Attorneys for Plaintiff.

It is hereby agreed by the defendants that they will answer or plead to the above and foregoing amended complaint on the 20th day of July, 1881, and that an appearance is hereby entered for each and all of said above-named defendants, and that a copy of the above

and foregoing amended complaint has been served on us this — day of June, 1881.

(Signed) THOMSON & SAYER,
Att'ys for Defendants.

(Endorsed:) No. 708. In the U. S. circuit court. Edward T. Brown *et al. vs.* Edward Dunscomb *et al.* "Smuggler Two" lode *vs.* "J. C. Johnston" lode. Amended complaint. Filed July 7th, 1881. (Signed) Exward F. Bishop, clerk. Taylor & Ashton, att'ys for pl'ffs.

A true copy.
Teste:
[SEAL.] WILLIAM A. WILLARD, *Clerk*,
By CHAS. W. BISHOP, *Deputy Clerk.*

(Indorsed:) L. Brown *vs.* Dunscomb *et al.* Smuggler No. 2 *vs.* J. C. Johnston. Amended complaint.

490 EXHIBIT M. John W. Webster, Examiner.

Doc't # 11205 W., page 291.

STATE OF COLORADO, *County of Gunnison,* } *ss:*

Know all men by these presents that I. W. Chatfield, the undersigned, has this 18th day of December, 1880, located and claimed and by these presents do- locate and claim by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the "Chatfield" lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on the northwesterly side and 150 feet on the southeasterly side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, 141 feet running S. 44° 30′ W. from center of discovery tunnel and 1,359 feet running N. 44° 30′ E. from center of discovery tunnel, said discovery being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim, in Roaring Fork mining district, county of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at cor. No. 1, a pine post marked cor. No. 1, Chatfield lode, and being the same as cor. No. 1 of the J. C. Jonnson lode, U. S. survey No. 1436, from which a dead pine tree 12 in. in diameter bears N. 24° 20′ W. 20 feet, a dead pine tree 14″ in diam-ter bears S. 36° 36′ W. 33.2 feet, and a ledge of rock on Aspen mountain bears S. 68° 32′ W., and a mountain peak (name unknown) bears N. 60° 10′ W., and the mouth of the discovery tunnel bears N. 2° 16′ W.

491 205.9 ft.; thence from cor. No. 1 N. 45° 30′ W. 300 feet to cor. No. 2, a pine post; thence N. 44° 30′ E. 750 feet to center

stake and 1,500 feet to cor. No. 3; thence S. 45° 30′ E. 300 — to cor. No. 4, a pine post, being the same as cor. No. 4 of the J. C. Johnson lode, U. S. survey No. 1436; thence S. 44° 30′ W. 750 ft. to center stake & 1,500 feet to cor. No. 1, the place of beginning; variation in all courses, 14° 45′ E. The above-described claim is situated on Smuggler mountain, northeasterly from the town of Aspen.

Said lode was discovered on the 14th day of June, A. D. 1880.

I. W. CHATFIELD. [SEAL.]

Attest: R. C. HUTCHISON.

Date of location, December 18th, A. D. 1880.
Date of certificate, December 19th, A. D. 1880.

(Indorsed:) M. 11205. Certified copy location certificate on the Chatfield lode.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this location certificate was filed for record in my office at 8 o'clock a. m., Dec. 22, 1880, and is duly recorded in Book 8, large, page 574.

S. B. HARVEY, *Recorder.*
J. R. HINKLE, *Deputy.*

492 STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 11205 as the same appears upon the records of my office in Book W, page 291.

Given under my hand and official seal this 7th day of April, A. D. 1888, at 8 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT N. John W. Webster, Examiner.

Whereas Edward Dunscomb, Isaac W. Chatfield, William J. Wilson, Daniel Sayer, and Charles I. Thomson have associated themselves together for purposes of incorporation under the general incorporation acts of the State of Colorado, they do therefore make, sign, and acknowledge these duplicate certificates in writing, which, when filed, shall constitute the articles of incorporation of the Fulton Mining Company:

Article I.

The name of said company shall be the Fulton Mining Company.

Article II.

The object- for which such company is created are to acquire by purchase and otherwise mining property in the county of Gunnison and State of Colorado, to work and operate the same, sell and otherwise dispose of the same, and to conduct a mining business generally in said county of Gunnison.

493 Article III.

The term of existence of said company shall be twenty years.

Article IV.

The capital stock of said company shall be one million dollars, divided into one hundred thousand shares of five dollars each.

Article V.

The number of directors of said company shall be five, and the names of those who shall manage the affairs of such company for the first year of its existence are Edward Dunscomb, Isaac W. Chatfield, William J. Wilson, Daniel Sayer, and Charles I. Thomson.

Article VI.

The principal office of said company shall be kept at Leadville, in the county of Lake, State of Colorado, with a branch office at Aspen, in the county of Gunnison, State of Colorado, and the principal business of said company shall be carried on in said county of Gunnison.

Article VII.

The stock of said company shall be non-assessable.

Article VIII.

The directors shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of the company not inconsistent with the laws of this State for the purpose of carrying on all kinds of business within the objects and purposes of such company.

494 In witness whereof the said incorporators have hereunto set their hands and seals this ninth day of December, A. D. 1880.

EDWARD DUNSCOMB.	[SEAL.]
I. W. CHATFIELD.	[SEAL.]
W. J. WILSON.	[SEAL.]
DANIEL SAYER.	[SEAL.]
CHAS. I. THOMSON.	[SEAL.]

STATE OF COLORADO, } ss:
County of Lake, }

I, S. N. Dwight, a notary public in and for said county of Lake, do hereby certify that Edward Dunscomb, Isaac W. Chatfield, Wil-

liam J. Wilson, Daniel Sayer, and Charles I. Thomson, who are personally known to me to be the same persons described in and who executed the within duplicate articles of incorporation, appeared before me this day and personally acknowledged that they signed, sealed, and delivered the same as their free and voluntary act and deed.

Witness my hand and notarial seal this ninth day of December, A. D. 1880.

[SEAL.] S. N. DWIGHT,
Notary Public.

STATE OF COLORADO, }
County of Gunnison, } *ss:*

I, D. C. Scribner, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of the articles of incorporation of the Fulton Mining Co., as the same appears in the files of Gunnison county in No. 11207.

495 Witness my hand and official seal, at Gunnison, this 26 day of March, 1888.

[SEAL.] D. C. SCRIBNER,
County Clerk and Recorder,
By H. BRAGG, *Deputy.*

(Indorsed:) 11207. N. Copy. Articles of incorporation of the Fulton Mining Co.

STATE OF COLORADO, }
County of Gunnison, } *ss:*

Filed at 8 o'clock a. m., Dec. 22nd, 1880.
SAM. B. HARVEY, *Recorder,*
By J. R. HINKLE, *Deputy.*

EXHIBIT O. John W. Webster, Examiner.

STATE OF COLORADO,
OFFICE OF THE SECRETARY OF STATE.

UNITED STATES OF AMERICA, }
State of Colorado, } *ss:*

I, James Rice, secretary of state of the State of Colorado, do hereby certify that the annexed is a full, true, and complete transcript of the certificate of incorporation of the Standard Mining Co. of Kans. City (copy), which was filed in this office the 19th day of
496 March, A. D. 1887, at 9 o'clock a. m., and admitted to record.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the great seal of the State of Colorado, at the city of Denver, this 24th day of March, A. D. 1888.

JAMES RICE,
Secretary of State.

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the articles of association of the "Standard Mining Company of Kansas City," filed July 2d, 1886, and of the certificate of incorporation issued to said company on the second day of July, 1886. as the same appears on file and of record, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri.

Done at office, in the city of Jefferson, this third day of September, A. D. eighteen hundred and eighty-six.

[SEAL.] MICH'L K. McGARTH,
Secretary of State.

Be it known by these presents that we, the subscribers hereunto, have associated ourselves together for the purpose of forming a business corporation under the laws of the State of Missouri, and to that end have agreed and do hereby agree and certify to the following:

497 First. The name of the proposed corporation is the "Standard Mining Company of Kansas City."

Second. The proposed corporation is to be located in the city of Kansas, Jackson county, Missouri.

Third. The amount of the capital stock of the proposed corporation is one hundred and twenty-five thousand ($125,000) dollars; the number of shares into which it is divided is twelve thousand and five hundred and the par value of each share is ten ($10) dollars; that the said capital stock has been *bona fide* subscribed and one-half thereof actually paid up in lawful money of the United States, and is in the custody of the persons herein named as the first board of directors.

Fourth. The names and places of residence of the several shareholders and the number of shares subscribed by each are as follows, the residence of each shareholder and the stock subscribed by him appearing herein opposite each name respectively:

Names.	Residence.	No. of shares.
Joseph S. Chick	Kansas City, Missouri	Four thousand.
Washington H. Chick	Kansas City, Missouri	Two thousand.
Oliver H. Dean	Kansas City, Missouri	Twenty-five hundred.
Howard M. Holden	Kansas City, Missouri	Four thousand.

Fifth. The number of the board of directors is four and the names of those agreed upon for the first year are as follows: Joseph S. Chick, Washington H. Chick, Oliver H. Dean, Howard M. Holden.

Sixth. The number of years this corporation is to continue is fifty (50).

Seventh. The purposes for which this association is formed are the mining of coal, lead, zinc, silver, gold, and other minerals; the

smelting, sampling, concentrating, and reduction of ores
498 and other minerals and dealing in the same; and to carry out and further the purposes aforesaid, to buy, lease, and otherwise procure coal, lead, zinc, silver, and gold mines, and mines containing other valuable minerals, and also to erect, buy, or lease buildings, machinery, and other property and improvements suitable for handling, smelting, reducing, and concentrating the ores and minerals aforesaid.

Witness our hands this the 29th day of June, A. D. 1886.

JOSEPH S. CHICK.
WASHINGTON H. CHICK.
OLIVER H. DEAN.
HOWARD M. HOLDEN.

STATE OF MISSOURI, } ss:
County of Jackson, }

On this 29th day of June, A. D. 1886, before me personally appeared Joseph S. Chick, Washington H. Chick, Oliver H. Dean, and Howard M. Holden, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Kansas City, the day and year first above written.

[SEAL.] EDW. W. TAYLOR,
Notary Public, Jackson Co., Mo.

My commission expires June 6, 1890.

Filed for record and duly recorded in my office this 30th day of June, A. D. 1886, at 4.15 p. m.

CHAS. D. LUCAS, *Recorder.*

499 STATE OF MISSOURI, } ss:
County of Jackson, }

I, Chas. D. Lucas, recorder of deeds within and for the county of Jackson aforesaid, do hereby certify that the above and foregoing is a full, true, and perfect transcript of the record of the articles of association, acknowledgment, and note of record thereon of "Standard Mining Company of Kansas City" as the same now remain of record in my office, in Book, series B, No. 174, on page 71 and following.

In testimony whereof I hereunto set my hand and affix the seal of said office, at Kansas City, Mo., this 30th day of June, A. D. 1886.

[SEAL.] CHAS. D. LUCAS,
Recorder of Deeds,
By D. W. WALLACE,
Deputy Recorder.

Filed and certificate of incorporation issued July 2d, 1886.

MICH'L K. McGARTH,
Secretary of State.

STATE OF MISSOURI:

Certificate of Incorporation.

No. 3112.

Whereas Joseph S. Chick, Washington H. Chick, Oliver H. Dean, and Howard M. Holden have filed in the office of the secretary of state articles of association or agreement in writing, as provided by law, and have in all respects complied with the requirements of law governing the formation of private corporations for manufacturing and business purposes:

Now, therefore, I, Michael K. McGarth, secretary of state of the State of Missouri, in virtue and by authority of law do hereby
500 certify that said parties, their associates and successors, have become a body corporate and duly organized under the name of "Standard Mining Company of Kansas City," and have all the rights and privileges granted to manufacturing and business corporations under the laws of this State, and that the amount of the capital stock of said corporation is one hundred and twenty-five thousand dollars.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri.

Done, at the city of Jefferson, this second day of July, A. D. eighteen hundred and eighty-six.

[SEAL.] MICH'L K. McGARTH,
Secretary of State.

(Endorsed:) Certificate of incorporation. The Standard Mining Company of Kansas City. Filed in the office of the secretary of state of the State of Colorado on the 19th day of March, A. D. 1887, at 9 o'clock a. m. James Rice, secretary of state.

(Indorsed:) O. Certificate of incorporation of the Standard Mining Co. of Kans. City. Copy.

501 EXHIBIT P. John W. Webster, Examiner.

Doc. 18473. Filed only.

Certificate of Standard Mining Company of Kansas City, in the State of Missouri, designating the town of Aspin as the principal place in the State of Colorado where the business of said company shall be carried on and Edward F. Brown as the authorized agent of the company.

Whereas a regular meeting of the board of directors of the Standard Mining Company of Kansas City — held at its office in Kansas City, Missouri, on the 7th day of September, A. D. 1886. All of the directors being present, the following resolutions was offered and adopted, to wit:

Resolved, That for the purposes of conforming to the requirements of the statutes of the State of Colorado concerning corporations, and

in order that this company may be authorized and permitted to do business in said State of Colorado under said statutes, we do hereby designate the town of Aspin, in the county of Pitkin and State of Colorado, as the principal place where the business of this company shall be carried on in said State, and we also designate Edward F. Brown as its authorized agent in said State, residing at said town of Aspin, upon whom process may be served; and we do hereby direct that a certificate shall be made, signed by the president and secretary of this company, duly acknowledged, designating our principal place of business in said State as aforesaid and our said authorized agent, upon whom process may be served, residing at said place as aforesaid, and do file said certificate when so executed with the secretary of state of the State of Colorado and in the office of the recorder of deeds of said county of Pitkin, in said State of Colorado.

502 Now, therefore, in pursuance of the requirements of the resolution aforesaid, it is hereby certified that the town of Aspen, in the county of Pitkin and State of Colorado, is the principal place where the business of said company shall be carried on in said State of Colorado, and that Edward F. Brown is the authorized agent of said company, residing at said town of Aspen, upon whom process may be served.

In witness whereof said Standard Mining Company of Kansas City has caused this certificate to be signed by its president and secretary and its corporate seal thereunto to be affixed this 7th day of September, A. D. 1886.

[Standard Mining Seal Company.]

STANDARD MINING COMPANY
OF KANSAS CITY,
By HOWARD M. HOLDEN, *President.*
JOSEPH S. SCHICK, *Secretary.*

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Before me, Fred. W. Perkins, a commissioner of deeds of the State of Colorado, this day personally appeared Howard M. Holden, who is personally known to me to be the same person who subscribed the foregoing certificate as the president of the Standard Mining Company of Kansas City, and Joseph S. Chick, who is personally known to me to be the same person who subscribed his name to said certificate as secretary of said company, and severally acknowledged that they so subscribed their names to said certificate and made and executed the same as such president and secretary respectively as aforesaid as the voluntary act and deed of the said Standard Mining Company at Kansas City and as their own voluntary act and deed for the uses and purposes therein set forth.

503 In witness whereof I have hereunto set my hand and affixed my official seal, at Kansas City, in said county of Jackson and State of Missouri, this 7th day of September, A. D. 1886.

{ Seal Fred. W. Perkins, Commissioner of Deeds for the State of Colorado at Kansas City, Jackson County, Missouri. }

FRED. W. PERKINS,
Commissioner of Deeds for Colorado at Kansas City, Missouri.

(Indorsed:) 18473, P.

STATE OF COLORADO, } ss:
County of Pitkin, }

Filed at 12.25 o'clock —. m., March 10, 1887, and duly recorded in book —, page —.

GEO. F. CROSBEY, *Recorder,*
By C. W. BROOKS, *Deputy.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 18473 as the same appears filed only in my office.

Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.45 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

504 EXHIBIT Q. John W. Webster, Examiner.

UNITED STATES LAND OFFICE,
LEADVILLE, COLO., *Sept. 29th*, 1885.

L. C. Northrop, Esq., Denver, Col.

DEAR S'R: In reply to yours of 28th inst. I would say; the only J. C. Johnston claim of which we have any record was entered for patent by the Fulton Mining Company on Dec. 28, 1882, and patent thereon issued and was delivered by us on March 15th 1884. It is located in the Roaring Fork mi'g dist. and is survey No. 1436.

We cannot furnish any further abstract of title than that above given, unless a formal certificate is required of such facts.

Very resp'y, S. J. HANNA, *Register.*

(Indorsed:) Q. Sept. 29, '83. Letter. Hanna, U. S. reg'r, to Northrop. Re. pat. applicat. J. C. Johnston.

EXHIBIT R. John W. Webster, Examiner.

Doc. 9956, Book V, page 10.

This deed, made this 15th day of October in the year of our Lord one thousand eight hundred and eighty between Charles I. Thomp-

son and Daniel Sayer of the county of Lake and the State of Colorado, of the first part, and William J. Wilson of the county of Lake and State of Colorado, of the second part, witnesseth,

That the said party of the first part, for and in considera-
505 tion of the sum of six hundred ($600.00) dollars, to the said parties of first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, ha- remised, released, sold, conveyed and quitclaimed and by these presents do remise, release, sell, convey and quitclaim unto the party of the second part, his heirs and assigns forever, all the right, title, interest, claim and demand which the said parties of the first part have in and to the following-described real estate, situate, lying and being in the county of Gunnison and State of Colorado, to wit:

All the right, title, interest claim and demand which we have in and to the following-described lode lead ledge vein claim and mineral deposit known as and called the Smuggler No. 2 lode, lying and being in the Roaring Fork mining district, save and except an undivided one-eight-($\frac{1}{8}$) interest therein which the grantors herein reserve and retain in themselves.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the said parties of the first part, either in law or equity to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES I. THOMPSON. [SEAL.]
DANIEL SAYER. [SEAL.]

Signed, sealed, and delivered in presence of—
—— ——.

506 STATE OF COLORADO, } ss:
County of Lake, }

I, S. N. Dwight, a notary public in and for said county, in the State aforesaid, do hereby certify that Charles I. Thomson and Daniel Sayer, who are personally known to me as the persons whose name- are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of October, A. D. 1880.

[L. S.] S. N. DWIGHT,
Notary Public.

(Indorsed:) R. Certified copy. No. 9956. Quitclaim deed. Charles I. Thompson and D. Sayer to William J. Wilson.

STATE OF COLORADO, } ss:
County of ——, }

I hereby certify that this deed was filed for record on the 6 day of Nov., A. D. 1880, at 9 o'clock a. m., in my office and duly recorded in Book 17, L., page No. 160

S. B. HARVEY, *Recorder.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 9956 as the same appears upon the record of my office in Book V, page 10.
507 Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.20 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT S. John W. Webster, Examiner.

Doc't # 9957, Book Y, page 178.

This indenture, made the 12th day of October, in the year of our Lord one thousand eight hundred and eighty, between John C. Johnston, of the county of Lake and State of Colorado, of the first part, and Charles J. Thompson and David Sayer of the county of Lake and State of Colorado, of the second part. Witnesseth,

That the said party of the first part, for and in consideration of the sum of — dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and assigns

The following-described real estate and mining property to wit: The Smuggler No. 2 lode lead ledge vein claim and mineral deposit the said lode adjoining the Smuggler lode and situate lying and being in the Roaring Forks mining district Gunnison county State of Colorado. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually
508 had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances; to have and to hold all

and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN C. JOHNSTON. [SEAL.]

STATE OF COLORADO, } ss:
Lake County, }

I, S. N. Dwight, a notary public in and for said county, in the State aforesaid, do hereby certify that John C. Johnston, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and — seal this 12th day of October, A. D. 1880.

[L. S.] S. N. DWIGHT,
Notary Public.

509 (Indorsed:) S. No. 9957. Mining deed. J. C. Johnston to Thompson & Sayre. (Sm. 2.)

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 6th day of Nov., A. D. 1880, at 9 o'clock a. m., in my office, and duly recorded in Book 15 (L.), page No. 386.

S. B. HARVEY, *Recorder.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 9957 as the same appears upon the records of my office in Book Y, page 178.

Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.35 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT T. John W. Webster, Examiner.

Doc't 11203, Book Y, page 199.

This indenture, made the fourteenth day of December in the year of our Lord one thousand eight hundred and eighty between Isaac W. Chatfield of the county of Lake and State of Colorado, party of the first part, and the Fulton Mining Company a corporation organized under the laws of the State of Colorado, party of the second part, witnesseth,

510 That the said party of the first part, for and in consideration of the sum of one thousand dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released and forever quitclaimed, and by these presents doth grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns all right, title and interest of said party of the first part in and to that certain lode and mining claim known as and called the J. C. Johnston lode, situated in Roaring Forks mining district in the county of Gunnison and State of Colorado. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

ISAAC W. CHATFIELD. [SEAL.]

511 STATE OF COLORADO, } ss:
County of Lake, }

I, Daniel Sayer, a notary public in and for said county, in the State aforesaid, do hereby certify that Isaac W. Chatfield, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th day of December, A. D. 1880.

DANIEL SAYER,
[L. S.] *Notary Public.*

(Indorsed:) T. Certified copy. No. 11203. Mining deed. I. W. Chatfield to the Fulton Mining Company.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 22d ——, A. D. 1880, at 8 o'clock a. m., in my office and duly recorded in Book 15, L., page No. 550.

SAM'L B. HARVEY, *Recorder,*
Fee, $2.00. By J. R. HINKLE, *Deputy.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 11203 as the same appears upon the records of my office in Book Y, page 199.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

512 EXHIBIT U. John W. Webster, Examiner.

Doc't 11204, Book Y, page 200.

This indenture, made the — day of ——, in the year of our Lord one thousand eight hundred and —, between G. A. Crittenden and J. W. Adair, of the county of Gunnison and State of Colorado, parties of the first part, and the Fulton Mining Company of the county of Lake and State of Colorado, party of the second part, witnesseth,

That the said parties of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns all our interest in and to that certain lode and mining claim situate in Roaring Forks mining district, in the county of Gunnison and State of Colorado, known as and called the J. C. Johnston lode or mine. Together with all the dips, spurs and angles, and also the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with
513 the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, its successors and assigns forever.

It is intended hereby to convey such interest only as we now have in said mining claim.

In witness whereof, the said part- of the first part ha- hereunto set — hand — seal the day and year first above written.

G. A. CRITTENDEN. [SEAL.]
J. W. ADAIR. [SEAL.]

STATE OF COLORADO, } ss:
County of Lake, }

I, S. N. Dwight, a notary public in and for said county, in the State aforesaid, do hereby certify that G. A. Crittenden, who is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 9th day of December, A. D. 1880.

[L. S.]

S. N. DWIGHT,
Notary Public.

STATE OF COLORADO, } ss:
County of Gunnison, }

I, B. Clark Wheeler, in and for said county, in the State aforesaid, do hereby certify that J. W. Adair, who is personally known to me as the person whose name is subscribed to the annexed deed,
514 appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of December, A. D. 1880.

[L. S.]

B. CLARK WHEELER,
Notary Public.

(Indorsed:) U. Certified copy. No. 11204. Mining deed. Crittenden & Adair to Fulton Min'g Co.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 22nd day of Dec., A. D. 1880, at 8 o'clock a. m., in my office and duly recorded in Book 15, L., page No. 551.

S. B. HARVEY, *Recorder,*
By J. R. HINKLE, *Deputy.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 11204 as the same appears upon the records of my office in Book Y, page 200.

[SEAL.] Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.30 o'clock p. m.

FRED. H. STOCKMAN,
County Clerk and Recorder.

515 EXHIBIT V. John W. Webster, Examiner.

Doc't 11302, Book X, page 56.

This indenture, made the tenth day of August in the year of our Lord one thousand eight hundred and eighty between George A. Crittenden and Joseph W. Adair of the county of Gunnison and State of Colorado, party of the first part, and J. C. Achison of the county of Lake and State of Colorado, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns all their right, title and interest in and to the mining lode ledge or deposit known as the "J. C. Johnston" situate in Gunnison county Roaring Fork mining district State of Colorado, described as follows beginning at corner No. 1 S. W. corner post of claim, thence N. 44° 30′ E. o*h* 750 feet a post corner No. 2 H center side-line post of claim, and continued course 1,500 feet to post No. 3 N. W. corner post of claim, whence b'rs ledge of rocks on Mt. Maggie N. 18° 45′ W., whence peak on Maroon range, b'rs S. 67° 10′ W., thence S. 45° 30′ E. 300 feet to post No. 4 N. E. corner post of claim, whence peak on Mt. Sophie b'rs N. 79° W., whence cliff on Aspen Mt. b'rs S. 67° 45′ W., thence S. 44° 30′ W., 750 feet to a post No. 5 east center side line of claim and continued course in *an* 1,500 feet to post No. 6 S. E. corner post of claim. Thence N. 45° 30′ W. 300 feet to post No. 1 the place of beginning, all bearings true var. 15° 30′ E., said lode*s* wa*s* discovered and located on the 4th day of August, 1880, also, any and all right, title and
516 interest they may have in and to the mining lode ledge or deposit known as the Smuggler No. 2 situated in Roaring Fork mining district Gunnison county aforesaid. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set their hands and seals the day and year first above written.

G. A. CRITTENDEN. [SEAL.]
J. W. ADAIR. [SEAL.]

STATE OF COLORADO, } ss:
County of Lake, }

I, J. Nevill Hughes, a notary public in and for said county, do hereby certify that G. A. Crittenden and J. W. Adair, personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and
517 purposes therein set forth.

Given under my hand and notarial seal this tenth day of August, A. D. 1880.

[L. S.] J. NEVILL HUGHES,
Notary Public.

(Indorsed:) V. Certified copy. No. 11302. Mining deed. From G. A. Crittenden and J. W. Adair to J. C. Achison.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 27th day of Dec., A. D. 1880, at 9.00 o'clock a. m., in my office, and duly recorded in Book 16, page No. 202.

SAM. B. HARVEY, *Recorder,*
By J. R. HEMPLE, *Deputy.*

Fees, $2.00.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 11302 as the same appears upon the records of my office in Book X, page 56.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

518 EXHIBIT W. John W. Webster, Examiner.

Doc't # 11979, Book Y, page 229.

This indenture, made the thirty-first day of January in the year of our Lord one thousand eight hundred and eighty-one between James C. Acheson of the county of Jackson and State of Missouri, party of the first part, and James E. Seaver of the county of Jackson and State of Missouri, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns an undivided five-thirty-seconds ($\frac{5}{32}$) in the J. C. Johnston lode ledge or mineral deposit located and situated near the town of Aspen, Roaring Fork mining district Gunnison county, Colorado, and more fully described by the location certificate filed in the recorder's office at Gunnison city Colorado. Together with all the dips, spurs and angles, and also all the metals ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel
519 thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES C. ACHESON. [SEAL.]

STATE OF MISSOURI, } ss:
County of Jackson, }

I, W. J. Ward, a notary public in and for said county, in the State aforesaid, do hereby certify that J. C. Acheson, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 31st day of January, A. D. 1881.

[L. S.]

W. J. WARD,
Notary Public.

My commission expires July 20th, 1881.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, William Z. Hickman, clerk of the county court within and for the county and State aforesaid, do hereby certify that W. J. Ward, whose name appeared to the foregoing acknowledgment, is and was at the time of signing the same a notary public within and for said

county, duly appointed, commissioned, and qualified; that
520 full faith and credit is and ought to be given to all his official deeds as such; that his commission was dated the 21st day of July, 1875, and will expire on the 21st day of July, 1881, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at office, in the city of Independence, this 1st day of February, 1881.

[L. S.] WM. Z. HICKMAN, *Clerk.*

(Indorsed:) W. Certified copy. No. 11979. Mining deed. J. C. Acheson to Jas. E. Seaver. $\frac{5}{3\,2}$ J. C. J. lode.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 8th day of Feb'y, A. D. 1880, at 9 o'clock a. m., in my office, and duly recorded in Book 16 L, page No. 344.

J. R. HINKLE, *Recorder.*
By J. C. BOHLE, *Deputy.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 11979 as the same appears upon the records of my office in Book Y, page 229.

Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.30 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

521 EXHIBIT X. John W. Webster, Examiner.

Doc't 5664, Book Y, page 204.

This indenture, made the sixth day of July in the year of our Lord one thousand eight hundred and eighty between Bella R. Seaver and Margaret Dunscomb of the county of Gunnison and State of Colorado, parties of the first part, and Ed. F. Browne of the county of Jackson and State of Missouri party of the second part, witnesseth,

That the said parties of the first part, for and in consideration of the sum of twenty-five hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns an undivided one-twelfth ($\frac{1}{1\,2}$) interest of an undivided three-quarter ($\frac{3}{4}$) interest in and to the following mining claims, lodes or mineral deposits, viz: "Smuggler

Number Two" "Combination" "J. C. John. Lilly" and "Kansas City" all situate in Roaring Forks mining district Gunnison county Colorado, near Aspen city. Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand
522 whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hand- and seal- the day and year first above written.

BELLA R. SEAVER,
By J. C. ACHISON,
Att'y-in-Fact. [SEAL.]
MARGARET A. DUNSCOMB,
By J. C. ACHISON,
Att'y-in-Fact. [SEAL.]

STATE OF COLORADO, } *ss:*
County of Chaffee, }

I, J. E. Cole, a notary public in and for said county, in the State aforesaid, do hereby certify that J. C. Achison, attorney-in-fact for Bella R. Seaver and Margaret A. Dunscomb, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this sixth day of July, A. D. 1880.

[L. S.]

J. E. COLE,
Notary Public.

(Indorsed:) X. No. 5664. Mining deed. Seaver & Dunscomb to Ed I. Brown. (Smug'r 2.)

523 STATE OF COLORADO, } *ss:*
County of Gunnison, }

I hereby certify that this deed was filed for record on the 3rd day of September, A. D. 1880, at 1 o'clock p. m., in my office, and duly recorded in Book 16 L, page No. 24. Samuel B. Harvey, recorder.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 5664, as the same appears upon the records of my office in Book Y, page 204.

Given under my hand and official seal this 7th day of April, A. D. 1888, at 8 o'clock p. m.

[SEAL.] FRED H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT Y. John W. Webster, Examiner.

8956, Book Y, page 213.

This indenture, made the twenty-sixth day of July in the year of our Lord one thousand eight hundred and eighty between Bella R. Seaver of the county of Chaffee and State of Colorado, party of the first part, and James E. Seaver of the county of Chaffee and State of Colorado, party of the second part, witnesseth,

524 That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to — — hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns

An undivided eleven-forty-eighth ($\frac{11}{48}$) interest in the Smuggler Two lode ledge or mineral deposit situated near Aspen city in Johnson's hill, Roaring Fork mining district Gunnison county Colorado. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said part- of the first part ha- hereunto set — hand and seal the day and year first above written.

BELLA R. SEAVER. [SEAL.]

525 STATE OF COLORADO, } ss:
County of Chaffee, }

I, A. B. Choplin, notary public in and for said county, in the State aforesaid, do hereby certify that Bella R. Seaver, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and without the hearing of her husband, and acknowledged that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 26th day of July, A. D. 1880.

[L. S.] A. B. CHOPLIN,
Notary Public.

(Indorsed:) Y. Certified copy. No. 8956. Mining deed. Bella R. Seaver to Jas. E. Seaver. (Sm. 2.)

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 19 day of Oct., A. D. 1880, at 9 o'clock a. m., in my office, and duly recorded in Book 16 L, page No. 67.

SAM'L B. HARVEY, *Recorder.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 8956 as the same appears upon the records of my office in Book Y, page 213.

Given under my hand and official seal this 7th day of
526 April, A. D. 1888, at 8.15 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT Z. John W. Webster, Examiner.

8957. Book Y, page 170.

This indenture, made the eighth day of October in the year of our Lord one thousand eight hundred and eighty between James E. Seaver of the county of Jackson and State of Missouri, party of the first part, and William C. Oburn of the county of Jackson and State of Missouri, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one dollar and other valuable considerations in lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents dies grant, bargain, sell, remise,

release and forever quitclaim unto the said party of the second part, and to his heirs and assigns

One undivided one-eighth interest in and to Smuggler Two lode or mining claim and in "Kansas City" lode or mining claim, both located and being situate near Aspen in Roaring Forks mining district in Gunnison county and State of Colorado, for a fuller description of said property reference is hereby made to the location certificate thereof recorded in the recorder's office in Gunnison county Colorado in Book 8 L at pages 102 & 113. Together with all
527 the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES E. SEAVER. [SEAL.]

STATE OF MISSOURI, } ss:
Jackson County, }

I, H. C. Marshall, notary public in and for said county, in the State aforesaid, do hereby certify that James E. Seaver, personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

528 Given under my hand and notarial seal this eight day of October, A. D. 1880.

[L. S.] H. E. MARSHALL,
Notary Public, Jackson County, Missouri.

(Indorsed:) Z. Certified copy. No. 8957. Mining deed. Jas. Seaver to Wm. C. Oburn. (Sm. 2.)

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 19th day of Oct., A. D. 1880, at 9 o'clock a. m., in my office, and duly recorded in Book 15, large, page No. 314.

S. B. HARVEY, *Recorder.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 8957 as the same appears upon the records of my office in Book Y, page 170.

Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.15 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

529 EXHIBIT A 1. John W. Webster, Examiner.

Doc't # 4529, Book 13, page 240.

This indenture, made the 21st day of April in the year of our Lord one thousand eight hundred and eighty-one between James C. Acheson and Elizabeth H. Acheson of the county of Jackson and State of Missouri, parties of the first part, and W. C. Oburn of the county of Jackson and State of Missouri, party of the second part, witnesseth,

That the said parties of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America & other valuable considerations to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns all their right title and interest in and to the following mining claims situate lying and being near the town of Aspen in Roaring Fork mining district Gunnison county Colorado

The Smuggler Two lode vein deposit & mining claim and the J. C. Johnson lode vein deposit and mining claim and the Kansas City lode vein deposit and mining claim more particularly described in the location certificates as recorded in the office of the recorder of Gunnison county Colorado.

Smuggler Two recorded Book 8 L page 113
J. C. Johnson recorded Book 18 page 23
Kansas City recorded Book 8 L page 102

Subject to the terms conditions and trusts upon which the conveyance to said J. C. Johnson lode was (recorded) received.

Together with all the dips, spurs and angles, and also all
530 the metals, ores, gold and silver bearing quartz, rock and earth therein and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof,

with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES C. ACHESON. [SEAL.]
ELIZABETH H. ACHESON. [SEAL.]

STATE OF MISSOURI, *County of Jackson,* } ss:

I, John A. Ross, a notary public in and for said county, in the State aforesaid, do hereby certify that James C. Acheson and Elizabeth H. Acheson, personally known to me to be the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and vol-
531 untary act for the uses and purposes therein set forth; and the said Elizabeth H. Acheson, wife of the said James C. Acheson, having been by me examined separate and apart and out of hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her husband, and that she does not wish to retract the same. My notarial commission will expire March 15th, 1882.

Given under my hand and notarial seal this 22nd day of April, A. D. 1881.

[Seal John A. Ross, Notary Public, Jackson Co., Mo.]

JOHN A. ROSS,
Notary Public.

(Indorsed:) A 1. Certified copy. No. 4529. Mining deed. Jas. C. & Eliz. Acheson to W. C. Oburn.

STATE OF COLORADO, *County of ——,* } ss:

I hereby certify that this deed was filed for record on the 13 day of Dec., A. D. 1882, at 9 o'clock a. m., in my office and duly recorded in Book 13, page No. 240.

WM. B. ROOT, *Recorder.*

STATE OF COLORADO, *County of Pitkin,* } ss:

I, Fred. H. Stocman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 4529 as the same appears upon the records of my office in Book 13, page 240.

532 Given under my hand and official seal this 7th day of April, A. D. 1888, at 8.50 o'clock p. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT B 1. John W. Webster, Examiner.

Doc't 17047, Book 34, page 506.

This indenture, made the twelfth day of October in the year of our Lord one thousand eight hundred and eighty-six between James E. Seaver and Bella R. Seaver of the county of Saline and State of Kansas, parties of the first part, and Frank W. Chick, of the county of Jackson and State of Missouri, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of twenty-five hundred dollars, — of the United States of America, to them in hand paid by the said part- of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns all their interests in and to the following mining claims situate near Aspen and in Roaring Fork mining district, in Pitkin county, State of Colorado, to wit:

The J. C. Johnston lode or mining claim
The Chatfield lode or mining claim
The Smuggler lode or mining claim
The Kansas City lode or mining claim

Together with all the dips, spurs and angles, and also the
533 metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hand- and seal the day and year first above written.

JAMES E. SEAVER. [SEAL.]
BELLA R. SEAVER. [SEAL.]

STATE OF KANSAS, } *ss:*
County — Saline, }

I, F. A. Geiger, a notary public in and for said county, in the State aforesaid, do hereby certify that James E. Seaver and Bella R.

Seaver, personally known to me to be the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

534 Given under my hand and official seal this 15 day of Oct., A. D. 1886.

F. A. GEIGER,
Notary Public.

[NOTARY SEAL.]

My commission as notary public will expire on the 27 day of Feb., 1890.

(Indorsed:) B 1. Certified copy. No. 17047. Mining deed. James E. Seaver *et al.* to Frank N. Chick.

STATE OF COLORADO, } ss:
County of ——, }

I hereby certify that this deed was filed for record on the 20 day of Oct., A. D. 1886, at 11.20 o'clock a. m., in my office and duly recorded in Book —, page No. —.

GEO. F. CROSBY, *Recorder.*

Fees, $2.00.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stocman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 17047 as the same appears upon the records of my office in Book 34, page 506.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.]

FRED. H. STOCKMAN,
County Clerk and Recorder.

535 EXHIBIT C 1. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Pitkin, }

D. G. Miller, being first duly sworn, on his oath says that he is a U. S. deputy mineral surveyor; that he has surveyed the J. C. Johnston and Chatfield Lode mining claims in Roaring Fork mining district, in Pitkin county, Colorado, and the underground workings of said claims.

That the attached and accompanying plat correctly represents the surface boundaries and underground workings of said claims except as to certain developments by stopes connecting different levels and a stope from the northeast end of the 4th level which extends upwards about 100 ft. on the plain of the vein towards J.

C. Johnston claim, which developments by stopes are the only workings not shown by said plat.

Affiant further says that the red line along the J. C. Johnston location marked "Approximate outcrop of vein" shows approximately the top or highest point of said J. C. Johnston vein, and further that all said workings are upon said J. C. Johnston vein or lode.

D. G. MILLER.

Subscribed and sworn to before me this 25th day of April, A. D. 1888.

[SEAL.] JOHN B. GLASSER,
Notary Public.

(Here follows map marked p. 536a.)

536 EXHIBIT D 1. John W. Webster, Examiner. 2 papers.

No. 2293.

Abstract of Title to the J. C. Johnston Lode. J. C. Johnston.

Book Z, page 317, Doc. 6992, 1.

Know all men by these presents that John C. Johnston, Joseph W. Adair, and George A. Crittenden, the undersigned, have this fourth day of August, 1880, located and claimed and by these presents do locate and claim by right of discovery and location, in compliance with the mining acts of Congress, approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the J. C. Johnston lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on each side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, 200 feet running S. 44° 30′ W. from center of discovery shaft and 1,300 feet running N. 44° 30′ E. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit and within the lines of said claim in Roaring Forks mining district, county of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

537 Beginning at corner No. 1, southwest corner post of claim, thence N. 44° 30′ E. at 750 ft., a post cor. No. 2, west center side line post of claim, and continued course 1,500 ft. to No. 3, northwest corner post of claim, whence brs. ledg- of rocks on Mt. Maggie N. 18° 45′ W., whence peak on Maroon range brs. 67° 10′ W.; thence S. 45° 30′ E. 300 ft. to post No. 4, N. E. corner post of claim, whence peak on Mt. Sopris brs. N. 77 W., whence cliff on Aspin Mt. brs. S. 67° 45′ W.; thence S. 44° 30′ W. 750 ft. to a post No. 5, east center side line of claim, and *and* continued course, in all 1,500 ft., to post No. 6, southeast cor. post of claim; thence N. 45°

30 W. 300 ft. to post No. 1, the place of beginning. The discovery shaft of this claim is situated on the northwest slope of Johnston mountain. John C. Johnston owns one undivided half of said claim, Joseph W. Adair owns one undivided fourth of said claim, and George A. Crittenden owns one undivided one-fourth of said claim. All b'r'ngs, true var., 15° 30′ E.

J. W. ADAIR. [SEAL.]
G. A. CRITTENDEN. [SEAL.]
JOHN C. JOHNSTON. [SEAL.]

Said lode was discovered on the 4th day of August, A. D. 1880.
Attest: G. A. CRITTENDEN.

Date of location, August 4th, A. D. 1880.
Date of certificate, August 4th, A. D. 1880.

Filed for record at 9 o'clock a. m., Sept. 21st, 1880.
SAMUEL B. HARVEY, *Recorder.*

(Indorsed:) Location certificate.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Geo. F. Crosbey, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the
538 foregoing is a full, true, and correct copy of doc. 6992 as the same appears upon the records of my office on Book Z, page 317.

Given under my hand and official seal this 22nd day of May, A. D. 1886, at 8 o'clock a. m.

[SEAL.]

GEO. F. CROSBY,
County Clerk and Recorder,
By FRANK M. YALE, *Deputy.*

[In pencil on margin:] YATES.

Title Bond.

Book Y, page 62, Doc. 6986.

2.

J. C. Johnson
to
Isaac W. Chatfield

Dated 14 Sept., 1880. Ack'd 14 Sept., 1880. Filed 21 Sept., 1880, 9 a. m. Penalty, $5,000.00. To convey ¼ J. C. Johnson lode for $1,200.00, to be paid in m'ly payments (see records); also other property.

Mining Deed.

Book Y, page 177, Doc. 9955.

3.

John C. Johnston to J. W. Chatfield.	Dated 12 Oct., 1880. Ack'd 12 Oct., 1880. Filed 6 Nov., 1880, 9 a. m. Consider., $1,200.00. Conveys all int. in the J. C. Johnstone lode.

539 *Mining Deed.*

Book Y, page 199, Doc. 11203.

4.

Isaac W. Chatfield to The Fulton Mining Company.	Dated 14 Dec., 1880. Ack'd 14 Dec., 1880. Filed 22 Dec., 1880, 8 a. m. Consider., $1,000.00. Conveys all int. in the J. C. Johnston lode.

Mining Deed.

Book Y, page 200, Doc. 11204.

5.

G. A. Crittenden, J. W. Adair to The Fulton Mining Company.	Dated —— —, 1880. Ack'd 9 & 17 Dec., 1880. Filed 22 Dec., 1880, 8 a. m. Conveys all int. in the J. C. Johnston lode.

Mining Deed.

Book X, page 56, Doc. 11302.

6.

G. A. Crittenden, J. W. Adair to J. C. Achison.	Dated 10 Aug., 1880. Ack'd 10 Aug., 1880. Filed 27 Dec., 1880, 9 a. m. Consider., $1,000.00. Conveys all int. in the J. C. Johnston —; also other property.

540 *Mining Deed.*

Book Y, page 229, Doc. 11979.

7.

James C. Achison to James E. Seaver.	Dated 31 Jan'y, 1881. Ack'd 31 Jan'y, 1881. Filed 8 Feb'y, 1880, 9 a. m. Consider., $1.00. Conveys $\frac{5}{32}$ int. in the J. C. Johnston lode.

Mining Deed..

Book 13, page 240, Doc. 4529.

8.

James C. Acheson, Elizabeth H. Acheson to W. C. Oburn. — Dated 21 Apr., 1881. Ack'd 22 Apr., 1881. Filed 13 Dec., 1882, 9 a. m. Consider., $1,000.00, &c. Conveys all int. in the J. C. Johnson lode & other prop., subject to the terms, condition-, & trusts upon which the conveyance to said J. C. Johnson lode was received.

Affidavit of Labor.

541 Book 6, page 45, Doc. 4636.

9.

J. C. Smith, at expense of W. H. Kingsbury, 1 of owner, &c. — Sworn to 5 Jan'y, 1883. Filed 5 Jan'y, 1883, 5 p. m. That at least $100.00 was expended on the J. C. Johnson lode for year ending 31 Dec., 1882.

Agreement.

Book 17, page 532, Doc. 9966.

10.

W. B. Wiley, Max Miller, sig'd m'ls Henry Statts, Joseph Burrows, J. Warren Elliott. — Dated 29 Jan'y, 1885. Filed 10 M'ch, 1885, 1.30 p. m. Concerns leases on Della S. 7 Rover Boy lodes & J. C. Johnson lode.

Assignment of Lease.

Book 17, page 538, Doc. 9974.

11.

G. S. McClintick to Joseph H. Burrows. — Dated 11 Dec., 1884. Filed 11 M'ch, 1885, 11.30 a. m. Consid'n, 300.00, &c. Of all int. in lease on J. C. Johnson lode on certain conditions. (See records.)

Assignment of Lease.

Book 17, page 538, Doc. 9975.

12.

David R. C. Brown, Horace K. Devereux to Jos. H. Burrows.	Dated 7 Oct., 1884. Filed 11 M'ch, 1885, 11.30 a. m. Consid'n, 560.00. Of all int. in lease on Smuggler No. 2 or J. C. Johnson lode.

542 *Incorporation Certificate.*

Book X, page 106, Doc. 11207.

13.

Fulton Mining Company. Recorded Dec. 22nd, 1880.

"NOTE."—Above is all that was certified to in transcript from Gunnison Co.

Transcript of Judgment.

Book 10, page 9, Doc. 7444.

14.

Joseph H. Burrows *ads.* J. E. Slagle, H. L. Harding.	Dated 16 Apr., 1884. Filed 16 Apr., 1884, 4 p. m. Judg't, $85.45.

STATE OF COLORADO, } *ss:*
County of Pitkin, }

I, George F. Crosby, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct abstract of title to the J. C. Johnston lode as same appears of record in my office.

In witness whereof I have hereunto set my hand and official seal this the 22nd day of May, A. D. 1886, 8 a. m.

[SEAL.] GEO. F. CROSBY,
Clerk and Recorder,
By FRANK M. YALES, *Deputy.*

[In pencil on margin:] YATES.

543 EXHIBIT D 1. John W. Webster, Examiner.

Continuation Abstract of Title to the J. C. Johnston Lode from May 22, 1886, to —— 15th, 1887, 9 a. m.

Transcript of judgment.

Book 10, page —, Doc. 4872.

1.

John B. Brooks *vs.* Ed. F. Browne.	Dated March 13, 1883. Filed March 14, 1883, 9 a. m. Am't judgment, 90.66. Transferred to Henry Webber March 29, 1884.

Certificate of Levy by Sheriff.

Book 9, page 117, Doc. 15264.

2.

John B. Brooks *vs.* E. F. Browne.	Date service, June 5, 1886. Filed June 5, 1886, 11.54 a. m. Levied on all right, title, and interest Ed. F. Browne in Kansas City lode, now known as J. C. Johnson lode.

Mining Deed.

Book 41, page 82, Doc. 15784.

3.

Fulton Mining Co., by Howard M. Holden, President, to William J. Anderson.	Dated July 5, 1886. Ack'd July 10, 1886. Filed July 14, 1886, 9 a. m. Cons'd'n, $125,000. Conveys the J. C. Johnston lode and other property.

544 *Notice Lis Pendens.*

Book J, page 212, Doc. 16430.

4.

John C. Johnson, Pl'f- *vs.* Isaac W. Chatfield, Wm. J. Wilson, Edw'd Dunscomb, Daniel Sayie, Chas. I. Thompson, Ed. T. Brown, J. C. Achison Jas. E. Seaver, Belle R. Seaver, Elizabeth H. Achison, Howard W. Holden, Margaret Dunscomb, Wm. L. Oburn, G. N. Crittenden, and The Fulton Mining Company, a Corporation, Defendants.	Date Notice, Aug. 30, 1886. Date institution suit Aug. 19, 1886. Filed Aug. 31, 1886, 11.15 a. m. To recover a one-fourth interest in and to claim as owner of the J. C. Johnston lode. Suit brought in the district court of the county of Pitkin.

Writ of Attachment & Levy.

Book 9, page 126, Doc. 15595.

5.

Scott & Co. *vs.* Ed. F. Brown.	Dated September 11, 1886. Filed Sept. 11, 1886, 2 p. m. Am't, $312.33, with interest. Levied on the J. C. Johnson lode and other property.

Mining Deed.

Book 44, page 506, Doc. 17047.

6.

James E. Seaver, Bella R. Seaver to Frank N. Chick. 545	Dated October 4, 1886. Ack'd Oct. 15, 1886. Filed Oct. 20, 1886, 11.20 a. m. Cons'd'n, $2,500.00. Conveys all their interest in J. C. Johnson lode and other property.

7.

Certificate, Place — Business, and Agent by Standard Mining Company of Kansas City, State of Missouri.	Dated Sept. 7, 1886. Ack'd Sept. 7, 1886. Filed only Mar. 10, 1887, 12.25 — m. Names Aspen as the principal place of business and Edward F. Browne authorized agent *agent.*

Mining Deed.

Book 44, page 301, Doc. 19589.

8.

W. J. Anderson to Standard Mining Company. | Dated June 17, 1887. Ack'd June 17, 1887. Filed June 21, 1887, 9.45 a. m. Cons'd'n, $2,500,000. Conveys J. C. Johnson lode and other property.

STATE OF COLORADO, *County of Pitkin,* } ss:

I, Fred. H. Stockman, county clerk and recorder in and for the said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct continuation of abstract of title to the J. C. Johnston lode from May 22, A. D. 1886, 8 a. m., to Apr. 7th, A. D. 1888, 9 a. m., as same appears of record in my office, excepting any and all taxes.

546 In witness whereof I have hereunto set my hand and official seal this 15th day of October, A. D. 1887, 9 a. m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT E 1. John W. Webster, Examiner.

Doc't 2821, Book W, page 187.

Abstract of Title to the Smuggler Two Lode, Roaring Fork Mining Dist.

STATE OF COLORADO, *County of ——,* } ss:

Know all men by these presents that Margaret A. Dunscomb, Bella R. Seaver, and John C. Johnston, the undersigned, *ahve* this 9th day of June, 1880, located and claimed and by these presents do locate and claim by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Smuggler Two lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on the southeast side and 150 feet on the northwest side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, 197 feet running south 30° west from center of discovery shaft and 1,303 feet running north 30° east from center of discovery shaft, said discovery shaft being

547 situate upon said lode, vein, ledge, or deposit and within the lines of said claim in Roaring Fork mining district, county

of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1 from center of discovery shaft, the line runs S. 30° W. 197 feet to end of center line; thence S. 60° E. 150 feet, a stake marked S. E. corner No. 1 Smuggler Two lode; thence from end of center line N. 60′ W. 150 feet to stake No. 6, marked S. W. corner Smuggler Two lode; thence from center shaft N. 30° E. 553 feet to center line; thence from middle of center line S. 60° E. — feet to stake No. 2, marked middle stake "Smuggler Two" lode; thence from middle of center line N. 60° W. 150 feet to stake No. 5, marked middle stake "Smuggler Two" lode; thence from middle of center line N. 30° E. 750 feet to end of center line; thence from end of center line N. 60° W. 150 feet to stake No. 4, marked N. W. corner "Smuggler Two" lode; thence from end of center line S. 60 — 150 feet to stake No. 3, marked N. E. corner "Smuggler Two" lode; bearings taken at S. W. corner stake No. 6; Amelia rock, Mount Aspen, bears S. 67° 06′ W.; east apex Red Butte bears N. 65° W. The locators owning the following proportions of "Smuggler Two" lode: Margaret A. Dunscomb, three-eighths, ⅜, or 562½ line-r feet; Bella R. Seaver, three-eighths, ⅜, or 562½ linear feet; John C. Johnston, two-eighths, ⅜, or 375 linear feet. Variation of compass, 15° easterly.

MARGARET A. DUNSCOMB. [SEAL.]
BELLA R. SEAVER. [SEAL.]
JOHN C. JOHNSTON. [SEAL.]

Said lode was discovered on the 15th day of April, A. D. 1880.
Attest: NORMAN F. JENCKES,
U. S. Dep. Min. Surveyor.

Date of location, April 15th, A. D. 1880.
548 Date of certificate, June 9th, A. D. 1880.

Filed for record at 9.00 o'clock a. m. July 8, 1880, and recorded in Book 8, L., on page 113.

S. B. HARVEY, *Recorder.*

GUNNISON COUNTY, } ss:
State of Colorado, }

(Indorsed:) Certified copy. Location certificate on the Smuggler Two mining claim of —, in — mining district, — county, State of Colorado.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this location certificate was filed for record in my office at 9.00 o'clock a. m. July 8, 1880, and is duly recorded in Book 8, large, on page 113.

S. B. HARVEY, *Recorder.*

Fee, $1.50.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stoc-man, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 2821 as the same appears upon the records of my office in Book W, page 187.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

549 STATE OF COLORADO, } ss:
County of Gunnison, }

Doc't # 1557, Book W, page 77.

Know all men by these presents that Isaac Cooper, J. M. Richardson, and Wm. T. King, the undersigned, have this 25th day of March, 1880, located and claimed and by these presents do locate and claim by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 18872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Smuggler No. 2 lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 150 feet on northerly side and 150 feet on southerly side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim 750 feet, running N. 45° E. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit and within the lines of said claim in Aspen mining district, county of Gunnison and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, thence N. 45° E. 750 ft. to center post and on same course with continued distance 1,500 ft. to N. E. cor. No. 2; thence S. 45° E. 300 ft. to cor. No. 3; thence S. 45° W. to center post and on same course with continued distance 1,500 feet to cor. No. 4; thence N. 45° W. 300 ft. to cor. No. 1, the place of beginning.

Said lode is situated on the north side of the Roaring Fork of the Grand river, about 3,000 ft. in a N. easterly direction from the town site of Aspen, Gunnison Co., Colorado.

550 Said lode was discovered and located M'ch 23rd, 1880.

Date of certificate, March 26th, A. D. 1880.

J. M. RICHARDSON. [SEAL.]
W. T. KING. [SEAL.]
ISAAC COOPER. [SEAL.]

STATE OF COLORADO, } ss:
County of Gunnison, }

Recorded May 15, 1880, at 10 o'clock a. m., in Book 3, large, page 299.

S. B. HARVEY, *Recorder.*

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stocman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 1557 as the same appears upon the records of my office in Book W, page 77.

Given under my hand and official seal this 11th day of April, A. D. 1888, at 9 o'clock a. m.

-[SEAL.]

FRED. H. STOCKMAN,
County Clerk and Recorder.

Power of Attorney.

Book V, page 87, Doc. 11297.

1.

James E. Seaver, Bella R. Seaver, Margaret A. Dunscomb, Edward Dunscomb, John C. Johnston, A. L. Rowze
to
551 James C. Achison.

Dated March —, 1880. Ack'd March 13–19 & 22, 1880. No seal on acknowledgment as to Bella R. Seaver. Filed Dec. 27, 1880, 9 a. m. Conveys power to locate claims and contract lease and sell any and all mining property which parties of first part now own in Colorado or may hereafter acquire.

Revocation Power of Att'y.

Book W, page 496, Doc. 496.

2.

Bella R. Seaver
to
J. A. Achison.

Dated July 26, 1880. Filed July 30, 1880, 10 a. m. No particulars, the book in which this was recorded in Gunnison county having been lost.

Mining Deed.

Book Y, page 204, Doc. 5664.

3.

Bella R. Seaver and Margaret A. Dunscomb, by J. C. Achison, att'y-in-fact, to Ed. F. Browne. — Dated July 6, 1880. Ack'd July 6, 1880. Filed September 3, 1880, 1 p. m. Cons'd'n $2,500. Conveys $\frac{1}{12}$ of an undivided $\frac{3}{4}$ Smuggler Number Two and other property.

Revocation of Power of Att'y.

Book V, page 71, Doc. 7044.

4.

Margaret A. Dunscomb to J. C. Acheson. — Ack'd Sept. 18, 1880. Filed Sept. 21, 1880, 9 a. m. Revokes all power given in power of att'y to sell and convey all mining interests in the county of Gunnison, State of Colorado.

552 *Title Bond.*

Book Y, page 62, Doc. 6986.

5.

J. C. Johnson to Isaac W. Chatfield. — Dated Sept. 14, 1880. Ack'd Sept. 14, 1880. Filed Sept. 21, 1880, 9 a. m. Penal sum, $5,000. To sell & convey $\frac{1}{2}$ his interest in the Smuggler Cad lode and other property.

The record of this deed is indistinct; put in not knowing but it may refer to the claim I am abstracting.

Mining Deed.

Book Y, page 213, Doc. 8956.

6.

Bella R. Seaver to James E. Seaver. — Dated July 26, 1880. Ack'd July 26, 1880. Filed Oct. 19, 1880, 9 a. m. Cons'd'n, $1.00. Conveys $\frac{11}{16}$ Smuggler Two lode.

Mining Deed.

Book Y, page 170, Doc. 8957.

7.

James E. Seaver to William C. Oburn.	Dated October 8, 1880. Ack'd October 8, 1880. Filed Oct. 19, 1880, 9 a. m. Cons'd'n, $1.00 and other valuable considerations. Conveys $\frac{1}{8}$ Smuggler Two lode and other property.

553 *Quitclaim Deed.*

Book V, page 10, Doc. 9956.

8.

Charles I. Thomson, Daniel Sayer to William J. Wilson.	Dated October 15, 1880. Ack'd October 15, 1880. Filed Nov. 6, 1880, 9 a. m. Cons'd'n, $600. Conveys all right, title, and interest of first parties in Smuggler No. 2 lode.

Mining Deed.

Book Y, page 178, Doc. 9957.

9.

John C. Johnstone to Charles I. Thompson and Daniel Sayer.	Dated October 12, 1880. Ack'd October 12, 1880. Filed Nov. 6, 1880, 9 a. m. Cons'd'n, — dollars. Conveys the Smuggler No. 2 lode.

Book Y, page 301, Doc. 11149.

10.

Notice of claim by Elizabeth H. Acheson.	Dated December 15, 1880. Ack'd December 15, 1880. Filed Dec. 20, 1880, 10 a. m. Declares that she is the owner of $\frac{5}{32}$ Smuggler No. 2 lode, held in trust for her by Margaret A. Dunscomb.

554 *Mining Deed.*

Book X, page 56, Doc. 11202.

11.

G. A. Crittenden, J. W. Adair to J. C. Achison.	Dated August 10, 1880. Ack'd August 10, 1880. Filed Dec'r 27, 1880, 9 a. m. Cons'd'n, $1,000. Conveys any and all right — title they may have in and to Smuggler No. 2 lode.

Mining Deed.

Book X, page 51, 11282.

12.

W. T. King to Isaac Cooper.	Dated December 23, 1880. Ack'd December 23, 1880. Filed Dec. 27, 188–, 8 a. m. Cons'd'n, $500. Conveys ⅓ Smuggler No. 2 lode and other property.

Mining Deed.

Book 13, page 240, Doc. 4529.

13.

James C. Acheson, Elizabeth H. Acheson to W. C. Oburn.	Dated April 21, 1881. Ack'd April 22, 1882. Filed Dec. 13, 1882, 9 a. m. Cons'd'n, $1,000 & other valuable considerations. Conveys all their right, title, and interest to Smuggler Two lode and other property.

555 *Transcript of Judgment.*

Book 10, page 4, Doc. 4872.

14.

John B. Brooks *vs.* Ed. F. Browne.	Date entry, Oct. 16, 1883. Certificate by clerk court M'ch 13, 1883. Filed March 14, 1883, 9 a. m. Am't judgment, $90.60.

Mining Deed.

Book 34, page 506, Doc. 17047.

15.

James E. Seaver and Bella R. Seaver to Frank N. Chick.	Dated October 12, 1886. Ack'd Oct. 15, 1886. Filed Oct. 20, 1886, 11.20 a. m. Cons'd'n, $2,500. Conveys all their interest in and to the Smuggler Two lode.

Revocation of Power of Attorney.

Book 42, page 494, Doc. 20937.

16.

John C. Johnston to J. C. Achison.	Dated August 21, 1880. Filed Oct. 28, 1887, 3.45 p. m. Revokes and annuls power of attorney given by J. C. Johnston & others to J. C. Acheson, March, 1880, and recorded Dec. 27, 1880.

556 STATE OF COLORADO, } ss :
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for the said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct abstract of title to the Smuggler Two lode as same appears of record in my office, excepting any and all taxes.

In witness whereof I have hereunto set my hand and official seal this 11th day of April, A. D. 1888.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT F 1. John W. Webster, Examiner.

Doc. 15784, Book 41, page 82.

This indenture, made this the 5th day of July A. D. 1886 by and between the Fulton Mining Company a corporation duly organized and created under the laws of the State of Colorado, party of the first part, and William J. Anderson of the city of Kansas county of Jackson State of Missouri, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one hundred and twenty-five thousand ($125,000) dollars, to it in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain and sell unto the said William

J. Anderson and unto his heirs and assigns the following-described property to wit:

The J. C. Johnston lode or mining claim for a particular description of which reference is hereby made to the United States patent issued for said lode or claim to the Fulton Mining Company,
557 February 21, 1884; also the Chatfield lode or mining claim for a description of which reference is hereby made to a certificate of the location thereof. Document No. 11205; in Book W, page 291, and in Book 8 at page 574 in the office of the clerk and recorder of deeds of Gunnison county Colorado; both of said mining properties and locations being situate near the town of Aspen in the Roaring Fork mining district in the county of Pitkin formerly Gunnison countyColorado said part of Pitkin county having been heretofore a part of the county of Gunnison and said document having been recorded when said premises were a portion of last-named county. To have and to hold the premises hereby conveyed with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the right, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the said premises, and every part and parcel thereof, with the appurtenances: by it or those under whom it claims; and that it the said party of the first part will warrant and defend the title to the said premises and property hereby granted sold and conveyed unto the said party of the second part and unto his heirs and assigns forever against the lawful claims and demands of all persons whomsoever. This deed is executed and delivered in pursuance and by virtue of the authority and instructions in that behalf by the board of directors
558 of the said The Fulton Mining Company.

In witness whereof the said The Fulton Mining Company has caused these presents to be subscribed by its president (who is its head officer) and attested by its secretary and its corporate seal to be affixed hereto the day and year first above written.

THE FULTON MINING COMPANY,
By HOWARD M. HOLDEN, *President.*

Attest: DANIEL SAYER, *Secretary.*

[Seal Fulton Mining Co., Colorado.]

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Doc't 15784, Book 41, page 82.

On this 10th day of July, A. D. 1886, I, Fred. W. Perkins, a commissioner of deeds for the State of Colorado, residing at Kansas City, in said county of Jackson and State of Missouri, duly appointed

and qualified under the laws of Colorado, do hereby certify that Howard M. Holden, who is personally known to me to be the person who, as president of the Fulton Mining Company, subscribed the name of the said The Fulton Mining Company to the foregoing instrument of writing as a party thereto, appeared before me this day in person and acknowledged that he as such president executed the same as his own voluntary act and deed and as the voluntary act and deed of said The Fulton Mining Company for the uses and purposes therein set forth.

Witness my hand and official seal, at office, in Kansas City, in the county and State aforesaid, the day and year last above written.

559 FRED. W. PERKINS,
Com'r of Deeds for Colorado at Kansas City, Mo.

[Seal Fred. W. Perkins, Commissioner of Deeds for the State of Colorado at Kansas City, Jackson County, Missouri.]

(Indorsed:) F 1. Certified copy. No. 15784. Mining deed. The Fulton Mining Company to W. J. Anderson.

STATE OF COLORADO, *County of* ——, } ss:

I hereby certify that this deed was filed for record on the 14th day of July, A. D. 1886, at 9 o'clock a. m., in my office and duly recorded in Book —, page No. —.

GEO. F. CROSBY, *Recorder.*

Fee, $2.50.

STATE OF COLORADO, *County of Pitkin*, } ss:

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 15784 as the same appears upon the records of my office in Book 41, page 82.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

560 EXHIBIT G 1. John W. Webster, Examiner.

Book 44, page 301, Doc. 19589.

This indenture, made the seventeenth day of June in the year of our Lord one thousand eight hundred and eighty-seven between W. J. Anderson of the county of Jackson and State of Missouri, party of the first part, and "Standard Mining Company of Kansas City" a corporation organized under the laws of the State of Missouri, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of

the sum of two million five hundred thousand dollars, of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns that certain lode or mining claim known as the "J. C. Johnson" lode being United States survey No. 1436; also that lode or mining claim known as the "Chatfield" lode being United States survey lot No. 1462 including that part of said Chatfield lode described in mineral entry No. 1471 of the United States land office at Leadville, Colorado, and also that part of said Chatfield lode awarded to the Fulton Mining Company by indenture rendered the 19th day of May 1885 in the United States circuit court at Denver, Colorado which last portion of said Chatfield lode is embraced in mineral entry No. 99 of the United States land office at Glenwood Springs, Colorado; also all interests of every kind and nature whatsoever of the party of the first part herein in and to the said Chatfield lode, all of the foregoing property situate lying and
561 being in Roaring Fork mining district, Pitkin county, Colorado and near the town of Aspin in said county. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appu-tenances thereto belonging or in anywise appertaining and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, its successors and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

W. J. ANDERSON. [SEAL.]

Filed for record 21 day of June, A. D. 1887, at 9.45 o'clock a. m.

GEO. F. CROSBY, *Recorder.*

STATE OF MISSOURI, } *ss:*
Jackson County, }

I, L. F. McCoy, clerk of district court in and for said county, in the State aforesaid, do hereby certify that W. J. Anderson, personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said in-
562 strument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under m*t* hand and seal of said court this 17th day of June, A. D. 1887.

[Seal Circuit Court of Jackson County, Missouri.]

L. F. McCOY, *Clerk*,
By D. M. McCLANAHAN, *D. C.*

(Indorsed :) G 1. Certified copy. No. 19589. Mining deed. W. J. Anderson to the Standard Mining Company of Kansas City.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 19589 as the same appears upon the records of my office in Book 44, page 301.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.]

FRED. H. STOCKMAN,
County Clerk and Recorder.

EXHIBIT H 1. John W. Webster, Examiner.

Power of Att'y.

11297.

STATE OF COLORADO, } ss:
Gunnison County, }

563 Filed for record in this office at 9 o'clock a. m., Dec. 27th, 1880, and recorded in Book 21, L. M., page 9.

SAM. B. HARVEY,
Recorder,
By J. R. HINKLE,
Deputy.

Book V, page 87.

Know all men by these presents that James E. Seaver and Bella R. Seaver, his wife; Edward Dunscomb and Margaret A. Dunscomb, his wife, all of the city of Kansas, county of Jackson and State of Missouri, and J. C. Johnston and A. L. Rouze, of the State of Colorado, have made, constituted, and appointed, and do hereby make, constitute, and appoint, James C. Acheson, of the city of Kansas, county of Jackson and State of Missouri, our true and lawful attorney, for us and in our name, place, and stead to locate mines, mining claims, and to prospect for mineral and develop the same, and for us and in our names, place, and stead to make all contracts, leases, deeds, and conveyances that may be necessary for the sale, lease, or conveyance of any and all mines, mining claims, or mineral lands now owned by us — which we may hereafter acquire within the State of Colorado, and concerning which it shall become necessary to make any contract, lease, or conveyance, and to grant, bargain, sell, and convey the same or any part thereof, and to receive any and all money for which the same may be leased, sold, or conveyed, and in our name, place, and stead to make, acknowledge, execute, and deliver unto the purchaser or purchasers thereof good and sufficient deeds of general warranty therefor, and to demand and receive, sue for and collect, all sums which may be-

come due to us by reason of any such lease, sale, or conveyance; and it is expressly understood to be the intention hereof that the said James C. Acheson shall have and we do hereby, grant, confirm, and ordain unto him full, complete, and plenary power for us and in our name, place, and stead to make such contracts, leases, and sales as to him may seem meet and proper and which he shall deem to be for the best interest of the parties granting this power; and it is the intention hereof that the power hereby conferred upon and vested in the said James C. Acheson or said attor-
564 ney shall include and extend to all his acts in relation to our mines and mining property in Colorado done and performed since the first day of March, A. D. 1880, and we hereby ratify and confirm all things lawful which our said attorney may have done in reference thereto, and we do hereby ratify and confirm all and singular that our said attorney may lawfully do by virtue of the power hereby granted, and all his acts which are lawful shall have the same validity, force, and effect in law and equity as if we had done the same in person.

In testimony hereof we have hereto set our hands and affixed our seals this — day of March, A. D. 1880.

JAMES E. SEAVER.	[SEAL.]
EDWARD DUNSCOMB.	[SEAL.]
BELLA R. SEAVER.	[SEAL.]
JOHN C. JOHNSTON.	[SEAL.]
MARGARET A. DUNSCOMB.	[SEAL.]
A. L. ROUZE.	[SEAL.]

Signed, sealed, & delivered in presence of—
D. C. GRIFFIN & E. P. ALLEN.

THE STATE OF MICHIGAN, } ss:
County of Washtenaw, }

Be it remembered that on this 13th day of March, A. D. 1880, before me, Darwin C. Griffin, a notary public in and for said county, personally appeared Bella R. Seaver, wife of James E. Seaver, and acknowledged that she executed the within instrument for the uses and purposes therein mentioned; and the said Bella R. Seaver, on a private examination apart from her husband, acknowledged that she executed the within instrument freely and without fear or compulsion from any one; and I further certify that the person who made said acknowledgment is known to me to be the same individual described in and who executed the within instrument.

[NO. SEAL.] D. C. GRIFFIN,
Notary Public, Washtenaw County, Mich.

565 STATE OF MICHIGAN, } ss:
County of Washtenaw, }

I, Everett B. Clerk, clerk of the county of Washtenaw and the clerk of the circuit court for said county, which is a court of record, do hereby certify that D. C. Griffin, before whom the an-

nexed acknowledgment purports to have been taken, was at the date of said acknowledgment a notary public in and for said county, duly commissioned and qualified and by law authorized to take the same; and I do further certify that I am well acquainted with the handwriting of the said notary public and verily believe his signature thereto is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of said county and court, at Ann Arbor, this fifteenth day of March, in the year one thousand eight hundred and eighty.

[L. S.] EVERETT B. CLARK, *Clerk.*

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Charles H. Hinman, notary public in & for said county, in the State aforesaid, do hereby certify that Edward Dunscomb, Jno. C. Johnston, A. L. Rouze, & James E. Seaver, who are personally known to me to be the same persons herein described and who executed the within indenture, personally appeared before me this day and acknowledged that they signed, sealed, and delivered the said indenture as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal this the nineteenth day of March, A. D. 1880.

[L. S.] CHARLES H. HINMAN,
Notary Public.

566 STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that Margaret A. Dunscomb, who is personally known to the undersigned, a notary public within and for said county, to be the person whose name is subscribed to the within power of attorney as a party thereto, this day appeared before me and acknowledged that she executed and delivered the same as her voluntary act and deed for the uses and purposes therein contained, and the said Margaret A. Dunscomb, being by me made acquainted with the contents of said instrument, acknowledged on an examination apart from her husband that she executed the same and relinquished her dower in the premises therein mentioned and referred to freely and without compulsion or under influence of her said husband.

Given under my hand and notarial seal this 22nd day of March, 1880, commissioned and qualified for a term ending August 25th, 1882.

[L. S.] AMOS H. KAGY,
Notary Public, Jackson County, Mo.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, William D. Hickman, clerk of the county court within and for the county and State aforesaid, do hereby certify that Amos H.

Kagy, whose name appears to the foregoing acknowledgment, is and was at the time of signing the same a notary public within and for said county, duly appointed, commissioned, and qualified; that full faith and credit is and ought to be given to all his official deeds as such; that his commission was dated the 26th day of August,
567 1876, and will expire on the 25th day of August, 1882, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office, in the city of Independence, this 24th ——, 187–. 80.

[L. S.] WM. D. HICKMAN, *Clerk.*

(Indorsed:) H 1. Certified copy. No. 11297. Fees, $2.50. Power of attorney. Jas. E. Seaver *et al.* to Jas. C. Acheson.

STATE OF COLORADO, } ss:
County of Pitkin, }

I, Fred. H. Stockman, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of document No. 11297 as the same appears upon the records of my office in Book V, page 87.

Given under my hand and official seal this 24th day of March, A. D. 1888, at — o'clock — m.

[SEAL.] FRED. H. STOCKMAN,
County Clerk and Recorder.

568 EXHIBIT I 1. John W. Webster, Examiner.

Record of the First Meeting of the Board of Directors of the Fulton Mining Company, Held at the Office of Thompson and Sayer, in Leadville, December Thirteenth, 1880.

At a meeting of the persons named in the certificate of incorporation of said company, there being present Isaac W. Chatfield, William J. Wilson, Daniel Sayer, Charles I. Thompson, and Edward Dunscomb—

On motion, the articles of incorporation, as filed in the office of secretary of state and in the office of the clerk and recorder of Gunnison county, were accepted as the articles of incorporation or charter of said company.

On ballot taken, Edward Dunscomb was elected president of the company, Isaac W. Chatfield was elected vice-president, William J. Wilson was elected treasurer, and Daniel Sayer was elected secretary.

On motion of Charles I. Thompson, the following by-laws were unanimously adopted:

BY-LAWS.

I.—*Officers.*

The officers of this company shall consist of a president, vice-president, secretary, treasurer, and superintendent, who shall be

chosen by the directors at their first meeting following the annual meeting of the stockholders in each year. They shall be elected from the board of directors, except the secretary and superintendent, who may or may not be directors.

Said officers shall hold their respective offices until their successors are elected and enter upon the duties of their offices.

569 A majority of the board of directors must be residents of Colorado. Vacancies among the directors may be filled at any meeting of the board of directors by regular ballot.

II.—*Duties of Officers.*

President.

It shall be the duty of the president to preside at all meetings of the directors and to sign all bonds, deeds, agreements, or other instruments of writing made or entered into by or on behalf of the corporation; to sign all certificates of stock and all orders for money on the treasurer, and, in general, perform all acts incident to his office.

Vice-president.

It shall be the duty of the vice-president to perform such functions as belong to the office of the president in the absence of the president.

Secretary.

The secretary shall give due notice of all the meetings of the stockholders and of the board of directors; shall prepare and keep proper books of record and of account for the business of the company and such other books as the directors may prescribe. He shall countersign and register all certificates of stock and other documents requiring the signature of the president, attaching the corporate seal of the company to all instruments requiring seal, and perform all such other duties as are incidental to his office.

570 A suitable compensation, to be determined by the directors, shall be allowed the secretary for his services. He shall be the custodian of the corporate seal.

Treasurer.

The treasurer shall be the custodian of the funds until the same be disposed of by order of the board of directors.

He shall give bond satisfactory to the board of directors for the faithful performance of his duties. No money shall be paid out by the treasurer except on the order of the president or superintendent, countersigned by the secretary.

Superintendent.

The superintendent shall have entire control of the working and development of the company's mining property, shall report to the

board of directors for their approval all contemplated work, and, after such approval, shall have full power to contract said work, subject, however, to the approval of the board of directors. All expenses incurred by the superintendent in the working and management of the company's property shall be borne by the company.

A suitable compensation, to be determined by the board of directors, shall be allowed him for his services.

III.—*Board of Directors.*

The board of directors shall consist of five members, always including the president, vice-president, and treasurer.

It shall be the duty of the board to exercise a general supervision over the affairs of the company, to receive and pass upon the reports of the secretary, treasurer, and superintendent, to audit
571 all bills and accounts against the company, and direct the secretary in correspondence. The board of directors shall cause its officers to make a full exhibit of their several departments and to prepare reports for submission to the annual meeting of the stockholders. The board of directors shall meet at such times as they shall from time to time determine, and a meeting of the board may at any time be called by the president or any two members of the board by causing personal notices to be served upon the directors at least one day before the date of such proposed meeting or by publication of the notice in some newspaper printed in the place where the principal office of the company shall be kept at least three days before the date of such proposed meeting. Three directors, including the president, shall constitute a quorum for the transaction of business. All directors and officers must be stockholders except the superintendent, who may or may not be a stockholder.

IV.—*Stockholders' Meetings.*

The first annual meeting of the company shall be held at the office of the company, in Leadville, at ten o'clock a. m. on the second Tuesday in January, A. D. 1882, and on the same Tuesday of each succeeding year. If omitted the directors shall hold over until their successors are appointed. Special meetings may be called by the board of directors or by one-tenth in amount of all the stock held.

In addition to the published notice in the newspaper demanded by law printed notice to each stockholder, whose post-office address is known, shall be mailed at least thirty days' previous to
572 each meeting, and the object of the same stated. Stockholders may be represented by proxies, which must be exhibited for inspection to the meeting before being admitted to vote.

V.—*Certificates of Shares.*

The subscribers to the capital stock of this company shall be entitled to certificates of their shares duly signed by the president and countersigned by the secretary.

The certificates of stock shall be numbered and registered as they are issued.

Transfers of all stock shall only be made on the books of the company either in person or by attorney, and the possession of stock shall not be regarded as evidence of ownership of the same unless it appears upon the stock books of the company that said certificate was issued or duly transferred to the holder of the same.

VI.—*Debts.*

No debt shall be contracted for the company except by order of the board of directors.

VII.—*Dividends.*

Dividends shall be made not in excess of the net earnings of the company at the close of every fiscal year, which shall be on the thirty-first day of December of every year or oftener as the board of directors may see fit.

VIII.—*Corporate Seal.*

573 This company adopts as its corporate seal the device described as follows: The name of the company around the outer edge, with the word "seal" in the centre.

IX.—*Amendments.*

These by-laws may be changed, amended, or revoked at any time by a two-thirds vote of the board of directors.

X.—*Miscellaneous.*

Any officer or stockholder of this company performing actual service therefore shall be allowed such reasonable compensation for such service as the board of directors shall determine.

After the adoption of the foregoing by-laws, upon motion of I. W. Chatfield, the board of directors adjourned until Wednesday, the fifteenth day of December, 1880, at 2 o'clock p. m. of that day.

(Signed) DANIEL SAYER, *Secretary.*

LEADVILLE, COLORADO,
WEDNESDAY, *December 15th*, 1880—2 o'clock p. m.

Meeting called to order by the president, there being present Isaac W. Chatfield, William J. Wilson, Daniel Sayer, Charles I. Thompson, and Edward Dunscomb.

On motion of Charles I. Thompson, seconded by Isaac W. Chatfield, the president was ordered to appoint an executive committee to consist of three members of the board of directors, and that such executive committee should be empowered to make immediate application for United States patents for all lode mining claims belonging to said company, and that such committee

574

should be impowered to sign all necessary papers for that purpose. The president thereupon appointed Charles I. Thompson, Isaac W. Chatfield, and Daniel Sayer as the executive committee of this corporation. On motion, it was ordered that the regular meetings of the board of directors be held on the second Tuesday of each month.

On motion of W. J. Wilson, seconded by Chas. I. Thompson, the executive committee were also authorized to employ such men to make developments on the mines belonging to said company as the executive committee might deem to the best interests of the company and report their proceedings in causing such developments to be made at the next meeting of the board of directors.

On motion of W. J. Wilson, seconded by I. W. Chatfield, the secretary of the company was duly authorized and empowered to perform all the duties of the treasurer in the absence of the treasurer from Lake county.

On motion of Daniel Sayer, the board adjourned, subject to the call of the president of the company or, in his absence, of the vice-president.

(Signed) DANIEL SAYER, *Secretary.*

LEADVILLE, COLO., *Jan'y 11th*, 1881.

The board of directors met this day, it being the regular day heretofore provided for the meeting of said board.

There were present the president, Edward Dunscomb; Daniel Sayer, and Chas. I. Thompson.

575 It was moved by Chas. I. Thompson and seconded by Daniel Sayer 50,000 shares of the capital stock of this company be issued immediately to the stockholders in proportion to their respective interests, and thereupon there was issued to Edward Dunscomb 14,583⅓ shares of said stock; to Wm. J. Wilson, 12,500 shares of said stock mentioned in certificate No. 3; to Isaac W. Chatfield, 12,500 shares in certificate marked No. 5; to Daniel Sayer, 3,125 shares in certificate marked No. 6; to Chas. I. Thompson, 3,125 shares in certificate marked No. 7.

(Signed) DANIEL SAYER, *Sec'ty.*

LEADVILLE, COLORADO, FRIDAY, *January 28th*, 1881.

Upon a call of the president and all of the directors of this corporation a meeting of the president and directors was held at the office of Thompson and Sayer, in the city of Leadville, in the county of Lake and State of Colorado, on the 28th day of January, A. D. 1881, at the hour of two o'clock p. m.

There were present Edward Dunscomb, the president; Wm. J. Wilson, the treasurer; Chas. I. Thompson, I. W. Chatfield, and Daniel Sayer.

The president called the meeting to order and, on motion of Chas. I. Thompson, seconded by Daniel Sayer, the president was instructed to appoint one of the members of the board of directors to execute all papers necessary in applying for United States patents for the mining claims belonging to this company, which motion was unan-

imously carried. The president thereupon appointed Charles I. Thompson to execute all such papers. A motion was made
576 by I. W. Chatfield and seconded by William J. Wilson that a power of attorney be executed by this company, duly signed by its president and attested by its secretary, to Charles I. Thompson to make application to the United States for a patent and for the entry and purchase of the J. C. Johnston lode and the Chatfield lode, situate in Gunnison county, Colorado, and to sign the name of said company to all papers necessary to be used in procuring a United States patent for said lodes and to perform all necessary acts to procure such patents. The said motion was unanimously adopted.

(Signed) EDWARD DUNSCOMB, *Pres'd't.*

DANIEL SAYER, *Secretary.*

APRIL 25TH, 1882.

In accordance with the provision of the by-laws of this company a special meeting was called on this day by Edward Dunscomb, Esq., president.

There were present at said meeting Chas. I. Thompson, Edward Dunscomb, I. W. Chatfield, and Daniel Sayer.

The following resolution was submitted to the board:

"Whereas Howard M. Holden, representing the various parties engaged in litigation with this company, has submitted the following proposition as a basis for the settlement of the conflicting claims: That 37,500 shares of the stock of this company are to be issued by *to* company to Howard M. Holden or to such parties as he may direct upon the conveyance to said company of the interest of such parties in Smuggler 2, Kansas City, and J. C. Johnston lodes, Roaring Fork mining district, Pitkin county, Colorado, held by W. C. Obern, H. C. Hollister, and others; that upon such convey-
577 ance and the dismissal of the suits against this company now pending in the circuit court of the United States for the district of Colorado said shares are to be issued as aforesaid, the adverses pending against the application for patent of said company for its said property to be withdrawn; also the suits against said company in Pitkin county, Colorado, to be dismissed; the residue of the unissued stock of said company to be divided among the present stockholders therein, exclusive of the parties receiving said 37,500 shares, as they may agree among themselves: Therefore resolved, That said proposition be, and the same is hereby, accepted, and the secretary is hereby instructed on behalf of the company to do all and singular whatsoever may be necessary and expedient to carry into effect and complete the arrangement contemplated by said proposition.

The following resolution was also adopted:

That whereas the board of directors of this company consider it desirable and expedient to increase the capital stock of this company to the sum of one million two hundred and fifty thousand dollars:

Therefore resolved, That a special meeting of the stockholders of this company be, and the same is hereby, called for the purpose of submitting to a vote of said stockholders the question of such increase of said capital stock, said meeting to be held at the office of said

company on the 6th day of June, A. D. 1882, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of said day, notice of the same to be published as required by law and also delivered personally or deposited in the post office to the address of each stockholder as required by law.

(Signed) EDWARD DUNSCOMB, *President.*

DANIEL SAYER, *Sec'y.*

578 *Stockholders' Meeting.*

LEADVILLE, COLORADO, *June 6th*, 1882.

At a meeting of the stockholders of the Fulton Mining Company, held at the office of Thompson, Sayer & Blake, the same being the office of the company, at the hour of two o'clock in the afternoon, this day.

There was present I. W. Chatfield and Daniel Sayer.

Upon motion of Daniel Sayer I. W. Chatfield was elected president of the meeting, and upon motion of I. W. Chatfield Daniel Sayer was elected secretary.

The said Daniel Sayer submitted proof that he had duly deposited a notice of this meeting in the post office at Leadville to each and all of the stockholders of this company at their usual place of abode, a copy of which notice was duly exhibited to said meeting and filed in the records of said company, and said notices were so deposited as aforesaid addressed as aforesaid to each stockholder more than thirty days before the date of this meeting, with postage prepaid thereon. This meeting is also held pursuant to the following notice, namely:

"*Notice.*

LEADVILLE, COLORADO, *April 25th*, 1882.

To the stockholders of the Fulton Mining Company:

You are hereby notified that a meeting of the stockholders of said company will be held, in pursuance of a resolution adopted by the directors of said company, in the city of Leadville, Lake county, Colorado, on the 6th day of June, A. D. 1882, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, for the purpose of voting upon the question of increasing the capital stock of said company to the sum of one million two hundred and fifty thousand dollars, at which meeting you are respectfully requested
579 to be present in person or by proxy.

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*"

Which said notice was duly published in the Leadville Daily Herald from the 26 day of April to the and including 6th day of May, A. D. 1882. Said Daniel Sayer exhibited the proxies of the following-named stockholders to vote in their behalf all the shares of stock by them owned on all matters properly coming before said

meeting, namely: Charles I. Thompson, Edward Dunscomb, Maggie Dunscomb, and W. J. Wilson.

The following resolution was introduced by Daniel Sayer:

Resolved, That the capital stock of this company be increased from one million dollars to the sum of one million two hundred and fifty thousand dollars, and that the president and secretary be, and they are hereby, empowered to do all and every act necessary to carry into effect this resolution.

The said resolution was carried unanimously, there being no votes against the same.

(Signed) DANIEL SAYER, *Secretary.*

MONDAY, *June 4th*, 1883.

The meeting was called to order at 3 o'clock p. m. this day.

Present: Edward Dunscomb, president; Daniel Sayer, secretary, and Charles I. Thompson. Neither W. J. Wilson or I. W. Chatfield being present the meeting, upon motion, was adjourned until July 5th, 1883, at 3 o'clock p. m.

580 JUNE 5TH, 1883.

The meeting was called to order at 3 o'clock p. m. this day.

Present: Edward Dunscomb, president; Daniel Sayer, secretary; and Charles I. Thompson. Neither I. W. Chatfield nor W. J. Wilson being present the meeting, upon motion, was adjourned until June (in pencil) 6th, 1883, at 3 o'clock p. m.

JUNE 6TH, 1883.

The meeting was called to order at 3 o'clock p. m.

Present: Edward Dunscomb, president; I. W. Chatfield, vice president; Daniel Sayer, secretary, and Charles I. Thompson.

It was moved by Charles I. Thompson and seconded by I. W. Chatfield that the action of the secretary in selling seven hundred shares of the treasury stock to Howard M. Holden for 25 cts. per share to pay the balance of the expenses for obtaining patents and entering the claims of said company *to* be approved and ratified. Upon vote being taken upon said motion it was unanimously adopted.

Edward Dunscomb produced before the board his affidavit showing the loss of new certificate No. 2 of the company, which said certificate of the new stock was issued to Maggie Dunscomb, dated September 26th, 1882, and was for four thousand shares, and said Edward Dunscomb asked that a duplicate certificate be issued to said Maggie Dunscomb in lieu thereof. Upon motion of I. W. Chatfield, seconded by Daniel Sayer, the secretary was instructed to issue such new certificate accordingly.

Attention was called to the fact that there are 9,896⅔ shares of the original stock of this company still remaining in the treasury. It was moved by Chas. I. Thompson, seconded — Daniel Sayer,

581 that, in accordance with the terms of the compromise made with H. M. Holden and his associates, as set forth in the minutes of the board at the meeting held April 25th, 1882,

that a portion of said stock be divided among the original stockholders of this company as follows, to wit:

To I. W. Chatfield,	$\frac{1}{4}$ shares	2,474
" Wm. J. Wilson,	$\frac{1}{4}$ "	2,474
" C. I. Thompson,	$\frac{1}{16}$ "	618
" Dan'l Sayer,	$\frac{1}{16}$ "	618
" Edward Dunscomb,	$\frac{1}{3}$ "	3,298

Leaving a balance of said stock belonging to said original stockholders undivided of $414\frac{2}{3}$ shares in the treasury, and that the secretary be instructed forthwith to issue to the several persons above named a certificate of stock for the number of shares aforesaid.

The said motion was adopted.

Upon motion, the president and secretary were instructed to communicate with H. M. Holden with reference to his selling a portion of the treasury stock in order to raise a fund to develop the mines of the company.

Upon motion of I. W. Chatfield, the meeting adjourned until such time as the president should call another meeting of the board.

(Signed) DANIEL SAYER, *Secretary.*

MONDAY, *May 12th*, 1884.

The following call for a meeting of the board of directors of the company, signed by I. W. Chatfield and Daniel Sayer, two of the directors of the company:

582 "*Notice of Directors' Meeting.*

To the directors of the Fulton Mining Company:

You are hereby notified that a meeting of the board of directors of the Fulton Mining Company will be held at the office of the company, in Leadville, Colorado, on Friday, the 16th day of May, A. D. 1884, at the hour of two o'clock p. m., for the purpose of transacting such business as may properly come before the board, at which meeting your attendance severally is respectfully requested.

I. W. CHATFIELD,
DANIEL SAYER,
Directors."

which was published in the Daily Chronicle, a newspaper published and of general circulation in the city of Leadville, in the county of Lake, on three successive days, to wit, the 13, 14, and 15 day of May, A. D. 1884.

(Signed) DANIEL SAYER,
Secretary.

FRIDAY, *May 16th*, 1884.

In pursuance of a call published for a meeting of the board of directors to be held at the office of the company on this day there appeared and were present Chas. I. Thompson and Daniel Sayer.

None of the other directors appearing and there being no quorum present, on motion, the meeting was declared adjourned until Wednesday, May 21st, 1884, at the same place, at the hour of 3 o'clock p. m.

(Signed) DANIEL SAYER,
Secretary.

WEDNESDAY, *May* 21*st*, 1884.

In pursuance of adjournment the board of directors of the company met at its office on this day, at the hour of 3 o'clock p. m.

Present: I. W. Chatfield, vice-president; Daniel Sayer, and
583 Chas. I. Thompson. A quorum being found present, Clark S. Chatfield submitted to the board a proposition to lease the J. C. Johnston mine, said lease to run for the period of one year from its date, he to work the mine and to pay to the company a royalty of ten (10) per cent. on the smelters' returns for all ore running less than 200 oz. of silver or 200 dollars in value to the ton. On all ore of the value of 200 dollars or over to the ton a royalty of 20 per cent.

On motion, it was ordered that the proposition of Clark S. Chatfield be accepted and the secretary be instructed to be caused to be drawn up duplicate leases of said property to said Chatfield, containing the usual conditions and covenants contained in mining leases, and have the same ready for signatures as speedily as possible.

On motion, the meeting adjourned.

(Signed) DANIEL SAYER, *Secretary.*

LEADVILLE, COL., *Dec.* 19*th*, 1884.

In the absence of the president, a meeting of the board of directors was called in due form by the vice-president to meet this day, at the office of the company, at the hour of ten o'clock a. m.

There were present at said meeting I. W. Chatfield, vice-president; Chas. I. Thompson, and Daniel Sayer.

I. W. Chatfield, vice-president, called the meeting to order. Charles I. Thompson moved that the secretary be instructed to sell a sufficient number of shares of the stock of the company to pay the fees and mileage of the United States marshal for executing writ of summons in case of The Fulton Mining Company *vs.* Peter Ross *et al.*, now pending in the United States court at Denver, and
584 such other necessary expenses and costs as may arise in said suit. The said motion was seconded by Daniel Sayer, and upon being submitted to vote was unanimously carried.

It was moved by Daniel Sayer and seconded by Chas. I. Thompson that Clark S. Chatfield be authorized and he hereby is empowered to assign all or any interest in the lease from this company to him to any person or persons to whom he may see fit to assign the same. Said motion was submitted to vote and was duly carried.

Upon motion, the meeting adjourned.

I. W. CHATFIELD,
Vice-President.

(Signed) DANIEL SAYER, *Secretary.*

LEADVILLE, COLORADO, *February 7th*, 1885.

The board of directors met at the office of Thompson & Sayer, being the office of the company, at the hour of ten o'clock a. m., pursuant to the following call, which was published in the Leadville Daily Herald in its issues of February 3rd and 6th, A. D. 1885.

Notice.

A meeting of the board of directors of the Fulton Mining Company is hereby called, to be held at the office of Thompson & Sayer, in the city of Leadville, Lake county, Colorado, on Saturday, February 7, 1885, at 10 o'clock a. m., for the transaction of important business.

I. W. CHATFIELD, *V. P.*

CHARLES I. THOMPSON,
DANIEL SAYER, *Directors.*

585 Present: Edward Dunscomb, president, and I. W. Chatfield and Charles I. Thompson, directors.

On motion, the board took a recess until the hour of two o'clock p. m.

2 O'CLOCK P. M.

Board met pursuant to adjournment.

Present: The same members as before.

On motion, Chas. I. Thompson was elected secretary *pro tem.*

The minutes of all former meetings were read and approved.

The following resolution was offered by Charles I. Thompson:

"Resolved, That for the purpose of paying and discharging the indebtedness, obligations, and liabilities of this company treasury stock thereof be sold by the secretary, to whomsoever will purchase the same, at the best price obtainable in cash, not less, however, than twenty-five cents per share, provided that any party or parties to whom the company is or may be indebted and whose indebtedness is allowed or may be allowed by this board prior to the first day of March, A. D. 1885, shall have the option of receiving the amounts of such indebtedness or any part thereof in stock of this company at twenty-five cents per share, such party or parties to elect whether they will receive such stock at said price in discharge of such indebtedness before said 1st day of March, A. D. 1885; and the president and secretary are hereby instructed to issue certificates of such stock to such purchaser or purchasers thereof or to such creditors of the company as may elect to receive stock in discharge of their claims at the price aforesaid, taking the receipts of such creditors for the amounts paid them either in money or stock."

On motion of Charles I. Thompson, seconded by I. W. Chatfield, the resolution was adopted.

586 I. W. Chatfield then presented his bill against the company for cash expended and services rendered in its behalf, amounting to thirteen hundred and twenty-seven & $\frac{48}{100}$ dollars, which was, upon motion, allowed and ordered paid.

On motion, it was declared to be the sense of the meeting that the Chatfield lode was intended to be included with the J. C. Johnston lode in the lease heretofore executed to Clark S. Chatfield.

On motion, it was ordered that when this meeting adjourn it adjourn until March 14th, 1885, at the same place, at the hour of ten o'clock a. m.

On motion, the board took a recess until Monday, February 9th, A. D. 1885, at 10 o'clock a. m.

(Signed) EDWARD DUNSCOMB, *President.*
CHAS. I. THOMPSON,
Sec'y pro Tem.

LEADVILLE, COLORADO, *February 9th*, 1885.

Board met at 10 o'clock a. m., pursuant to order of recess.

Present: Pres'd't Edward Dunscomb, Chas. I. Thompson, and Daniel Sayer.

Charles I. Thompson introduced the following resolution:

Whereas under the allotment of treasury stock made pursuant to a resolution of this board adopted at its meeting of June 6th, A. D. 1882, a mistake was made in estimating the number of shares to which Edward Dunscomb was entitled and in awarding him one-third instead of $\frac{2}{9}\frac{8}{6}$ of such stock, resulting in an overissue to him of $411\frac{2}{3}$ shares: therefore, resolved, that said Edward Dunscomb be, and he hereby is, required to return to the treasury of the company the said $411\frac{2}{3}$ shares of stock so overissued, and that the same, together with the shares now remaining in the treasury of treasury stock existing prior to the increase of the capital stock of the
587 company, be divided among the stockholders provided for in and in the manner contemplated by said resolution and the resolution adopted by the board at its meeting of April 25th, 1882.

Charles I. Thompson moved the adoption of said resolution and Daniel Sayer seconded the same, and a vote was taken thereon and said resolution was adopted.

The president, Edward Dunscomb, presented a bill against the company for services rendered and money paid out for and on behalf of the company, amounting to a balance of $2,274.98.

On motion, two thousand dollars was allowed in full of the bill and that amount ordered paid.

Charles I. Thompson presented a bill against the company in behalf of Thompson and Sayer for services rendered and cash paid out for and on behalf of the company, amounting to two thousand two hundred and seventy-five dollars and ninety cents.

On motion, the said bill was allowed and ordered paid.

On motion, the meeting adjourned.

(Signed) EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

LEADVILLE, COLORADO, *March 14th*, 1885.

10 o'clock a. m., pursuant to adjournment, there came I. W. Chatfield and Daniel Sayer.

There not being a quorum present, the meeting was adjourned to Tuesday, March 15th, at the hour of 10 o'clock a. m.

588 MARCH 15TH, 1885—10 o'clock a. m.

Now, on this day and at this hour, came Charles I. Thompson and Daniel Sayer, and there not being a quorum present of the board of directors, upon motion of Daniel Sayer, the meeting was adjourned until April 4th, 1885, at 10 o'clock a. m.

LEADVILLE, COLORADO, *April 4th*, 1885.

Now, on this day and at the hour of 10 o'clock a. m., the board of directors met pursuant to adjournment. There were present I. W. Chatfield, vice-president; Daniel Sayer, secretary, and Charles I. Thompson.

I. W. Chatfield reported to the meeting that a claim called the Arkansas lode, which conflicted with the Chatfield lode in its surface boundaries, had procured an approved survey and had posted on said claim an application notice for a United States patent; whereupon Charles I. Thompson introduced the following resolution, to wit:

Resolved, That the secretary be, and hereby is, instructed to cause a survey of the ground in conflict between the Chatfield lode and the Arkansas claim to be made and to procure an adverse plat to be made and obtain all necessary papers and prepare and file an adverse claim against the application for patent for said Arkansas claim, and Daniel Sayer, the secretary of this company, is hereby appointed its attorney-in-fact, and is authorized and empowered to sign the name of said company and to execute in its behalf any and all papers which may be necessary in making and filing said
589 adverse claim, and to do all acts and things in and about the premises which said company can or could do.

Upon motion, the said resolution was duly adopted.

LEADVILLE, COLORADO, *May 26th*, 1885.

The board of directors met at the office of the company in pursuance of the following notice:

"*Notice of Meeting.*

"Notice is hereby given that there will be a meeting of the board of directors of the Fulton Mining Company at the office of Thompson & Sayer, corner of Fifth street and Harrison avenue, if the city of Leadville, Colorado (the same being the office of said company), on the 26th day of May, A. D. 1885, at the hour of 10 o'clock a. m.

of said day, for the transaction of such business as may come before said board.

CHARLES I. THOMPSON,
J. W. CHATFIELD,
DANIEL SAYER,
Directors.

Leadville, Colo., May 21, 1885."

Which notice was duly published as required by the by-laws.

Present: Edward Dunscomb, pres'd't; I. W. Chatfield, W. J. Wilson, Chas. I. Thompson, and Daniel Sayer. There were also present Howard M. Holden and J. S. Chick, stockholders of the company.

The minutes of all previous meetings were read and approved.

Chas. I. Thompson tendered his resignation as director, which, upon motion, was accepted.

On motion, Howard M. Holden was duly elected to fill the vacancy.

Upon motion of Daniel Sayer, the proceedings of the meetings of February 7th and February 9th, 1885, so far as the same re-
590 lates to the allowance of bills and the issue of stock in payment thereof, were reconsidered and the stock so issued ordered to be returned to the treasury.

On motion, the action of Daniel Sayer in obtaining possession of the company's property at Aspen and the purchase by him for the company from the employees of the company's lessees of ore extracted by them from said property to secure to themselves the payment of their unpaid wages was approved and the amount advanced by him for that purpose was ordered refunded to him.

On motion, the bills heretofore passed upon of Edward Dunscomb, I. W. Chatfield, and Thompson & Sayer were referred to a committee, consisting of J. S. Chick and H. M. Holden, for examination and report.

Upon motion, the board took a recess until May 27th at 10 o'clock a. m.

MAY 27TH, A. D. 1885—10 o'clock a. m.

The board met pursuant to adjournment.

Present as on yesterday.

J. S. Chick and H. M. Holden, the committee appointed to examine the bills of Edward Dunscomb, I. W. Chatfield and Thompson & Sayer, submitted the following report: That there be allowed on the bill of I. W. Chatfield three hundred dollars; on that of E. Dunscomb, four hundred dollars, and on that of Thompson & Sayer, fifteen hundred dollars; which report was, on motion, adopted, the committee discharged, and the several amounts ordered paid.

Upon representation of Edward Dunscomb that certificate No. 33, for 500 shares, and certificate No. 34, for 88⅓ shares, both in the name of Maggie Dunscomb, had been destroyed by fire, and an investigation showing that an overissue of 409⅓ shares had been made to

him or Maggie Dunscomb, on motion, it was ordered that a
591 new certificate for the difference between the amount of said destroyed stock and the amount of said overissue being 172 shares, be issued to Maggie Dunscomb, and that the same stand in lieu of said certificates 33 and 34.

On motion, it was ordered that hereafter no charge shall be made by the directors or officers of this — except the secretary for attending meetings or other business of the company.

Howard M. Holden then offered the following resolution:

"Resolved, That the first clause of by-laws four (4) of this company, ending with the word year, be and the same is hereby amended so as to read as follows:

"The next annual meeting of this company for the election of directors shall be held at the office of the company, at Leadville, at 10 o'clock a. m., on the third Wednesday of July, A. D. 1885, and on the same day of each succeeding year."

On motion, said resolution was unanimously adopted, all the directors of the company voting therefor.

The secretary and acting treasurer, Daniel Sayer, submitted a statement of the amounts received by him for the company since the 7th day of October, A. D. 1884, and also a statement of the amounts disbursed by him for the same period, showing an aggregate amount of receipts of $723.71 and an aggregate amount of disbursements of $954.55, and also showing an indebtedness to him from the company of the difference between such receipts and disbursements of $230.84.

On motion, said statements were approved and ordered filed with the papers of the company.

On motion, the following amounts were ordered to be paid when the same are or may become due and payable:

592	Pay-roll to June 1st	500 00
	Balance due Dan'l Sayer	230 70
	Geo. W. Loyd, surveyor	25 00
	D. Hughes (blacksmith)	10 03
	Entering balance Chatfield claim	25 00
	To I. W. Chatfield for W. L. Wilson	140 00
	" C. I. Thompson, cl'k's fees	9 90
	" defray future expenses of operating mine	1,000 00
	The bill of McClintock for	42 00
	And of Thailon for	179 00

was ordered paid, subject to an investigation, to be made by H. M. Holden and I. W. Chatfield, to ascertain if the bills are correct, and whether or not the same have already been paid.

On motion, it was ordered that nine thousand (9,000) shares of the treasury stock of the company be sold, at fifty cents per share, for the purpose of discharging the present liabilities and defraying the future expenses of the company, the stockholders of the company to have the privilege of purchasing said stock in amounts proportioned to their several interests in the company. An allotment of the number of shares which each stockholder was entitled to take under

the foregoing order was thereupon made and adopted as a correct allotment; said allotment is as follows, to wit:

Name.	No. of shares.	Amount.
J. S. Chick	1,305	$652 50
E. Dunscomb, E. Dunscomb, Jr., Maggie A. Dunscomb	831	415 50
I. W. Chatfield	20	10 00
593 E. E. Chatfield	1,125	562 50
W. J. Wilson	1,368	684 00
C. I. Thompson	342	171 00
Olivia Thomson	223	111 50
Daniel Sayer	5	2 50
Anna A. Sayer	337	168 50
H. M. Holden	3,375	1,687 50
Selby Jones	34	17 00
H. M. Holden	34	17 00
Jas. E. Seaver	1	50
	9,000	$4,500 00

The stock was thereupon taken by the said several parties in the above proportions and certificates thereof issued accordingly.

Edward Dunscomb, I. W. Chatfield, Charles I. Thompson, and Daniel Sayer thereupon transferred to this company and returned to its treasury the stock issued to them under the proceedings of the meeting of February 7th and 9th, and in compliance with the order made at this meeting, which stock was by the secretary duly cancelled by the secretary.

On motion, Edward Dunscomb and I. W. Chatfield were authorized, should they deem it advisable, to employ O. H. Harker for the purpose of consultation with reference to the work of the property, at a salary not to exceed fifty dollars per month.

It was suggested by Charles I. Thompson that the suit brought by this company against Peter Ross and others, the ejectment suit brought in support of the adverse claim filed by this com-
594 pany for the Chatfield lode against the application of said Ross *et al.* for a patent to the Defiance claim had been determined at Denver in the circuit court of the United States, and that this company had recovered judgment in said cause, and that the company should purchase from the Government the balance of said Chatfield lode; that the receiver's duplicate receipt for the portion of said claim already entered should be surrendered to the register & receiver at Glenwood Springs, and that entry should be made by the company of the whole of said claim.

H. M. Holden thereupon offered the following resolution:

"Resolved, That Daniel Sayer, the secretary of this company, be, and he is hereby, instructed to proceed to Glenwood Springs and deliver the judgment-roll in said case and the receiver's duplicate receipt to the register of the land office there and to make entry of the

whole of said Chatfield lode, and he is hereby authorized and empowered to sign the name of said company to any and all papers which may be necessary or required and to do all things necessary in procuring a patent to said Chatfield lode." Said resolution was seconded by I. W. Chatfield, and, upon motion, the same was unanimously adopted.

Upon motion, the meeting adjourned until the third Wednesday of July, A. D. 1885, at the hour of ten o'clock a. m. of that day, it being the 15th day of July, A. D. 1885.

DANIEL SAYER, *Secretary.*

Stockholders' Meeting.

LEADVILLE, COLORADO, *July 15th*, 1885.

This day, at the hour of 10 o'clock a. m., at the office of the company, in pursuance of the following call:

595 "*Stockholders' Meeting.*

"The annual meeting of the Fulton Mining Company for the election of directors will be held at the office of the company (being the law office of Thompson & Sayer), in Leadville, Colorado, on Wednesday, the fifteenth day of July, A. D. 1885, at 10 o'clock in the forenoon.

"DANIEL SAYER, *Secretary.*"

which was duly published as required by law, came Charles I. Thompson, a stockholder of the company, and Arthur Canute, proxy for Howard M. Holden, a stockholder of the company, and organized a meeting of the stockholders. Arthur Canute was elected president *pro tem.* and Charles I Thomson secretary *pro tem.* A majority of the stock not being represented at the meeting, on motion the same was adjourned until the 22nd day of July, A. D. 1885, at 10 o'clock a. m., at the same place.

CHARLES I. THOMPSON,
Secretary pro Tem.

LEADVILLE, COLORADO, *July* 22, '85—10 o'clock a. m.

Now, at this day and hour, came J. S. Chick, I. W. Chatfield, Chas. I. Thompson, and Daniel Sayer, stockholders of the company; I. W. Chatfield, vice-president, in the chair. On motion, the meeting was adjourned until July 23rd, 1885, at 10 o'clock a m.

DANIEL SAYER, *Secretary.*

LEADVILLE, COLORADO, *July 23rd*, 1885—10 o'clock a. m.

Now, at this day and hour, came Howard M. Holden, J. S. Chick, Edward Dunscomb, W. J. Wilson, I. W. Chatfield,
596 Daniel Sayer, and Chas. I. Thompson, stockholders of this company, and, on motion, this meeting was adjourned until one o'clock p. m. of this day.

ONE O'CLOCK P. M.

Meeting of stockholders as before, with addition of Ed. F. Brown, a stockholder. The following resolution was submitted by the board of directors to the stockholders for action :

"Resolved, That the number of directors of this company be increased to seven, and that that portion of the certificate of incorporation relating to the number of directors be amended so as to read as follows: 'The number of directors of this company shall be seven.'"

On motion, a ballot was taken upon the adoption of the resolution, which resulted in a vote of 93,139 shares in favor of and 16,567 shares against the adoption of the same. The resolution was thereupon declared adopted.

On motion, the meeting proceeded to ballot for directors of the company for the ensuing year. The vote resulted as follows :

For Howard M. Holden	109,706	shares.
" J. S. Chick	109,706	"
" Wm. J. Wilson	109,706	"
" I. W. Chatfield	95,836	"
" Daniel Sayer	105,564	"
" Edward Dunscomb	93,139	"
" Ed. F. Brown	84,449	"
" C. I. Thompson	26,672	"
" Selby Jones	30	"

597 Howard M. Holden, J. S. Chick, W. J. Wilson, I. W. Chatfield, Daniel Sayer, Edward Dunscomb, and E. F. Brown, having each received a majority of all the votes cast, were declared duly elected directors of the company for the ensuing year.

On motion, the meeting adjourned *sine die*.

LEADVILLE, COLORADO, *July 23rd*, 1885—10 o'clock a. m.

In pursuance of a call made by the president the board of directors met at the company's office.

President, Edward Dunscomb; Daniel Sayer, secretary; I. W. Chatfield, W. J. Wilson, and Howard M. Holden, directors, were present.

Minutes of the last meeting were read and approved.

The committe- appointed to investigate the bill presented by Jas. Thailor for 179 dolls. reported that the company did not owe the bill, and that the same should not be paid. The same committee, also having in charge the bill of —— McClintock for 42 dolls., reported in favor of the same.

On motion, the report of the committee was adopted and the bill of McClintock ordered paid.

The secretary and acting treasurer submitted a report of the receipts and expenditures since the last meeting, which was, on motion, referred to a committee consisting of Messrs. Holden & Wilson.

The following preamble and resolution *was* submitted :

" Whereas it is deemed expedient for the board of directors that

the number of directors of this company be increased to seven: Therefore

Resolved, That the following resolution be submitted to the stockholders of this company for adoption or rejection at the annual meeting of the company to be held this day at the office, in
598 Leadville, Colorado:

Resolved, That the number of the directors of this company be increased to seven, and that that portion of the certificate of incorporation relating to the number of directors be amended so as to read as follows: The number of directors of this company shall be seven."

On motion, the board adjourned *sine die*.

DANIEL SAYER, *Secretary*.

LEADVILLE, COLORADO, *July* 23, 1885—4 o'clock p. m.

The directors this day elected at the annual meeting of this company met at the office of the company for the purpose of organization.

On motion, Edward Dunscomb was chosen chairman and Daniel Sayer secretary of the meeting. The directors then proceeded to ballot for officers of the company for the ensuing year.

For president, Howard M. Holden received six votes and Edward Dunscomb one vote. Howard M. Holden was declared elected. For vice-president, W. J. Wilson received five votes and J. S. Chick received two votes. W. J. Wilson was declared duly elected. For secretary, Daniel Sayer received six votes and was declared elected. For treasurer, J. S. Chick received six votes; declared elected.

On motion, Charles I. Thompson and Daniel Sayer were appointed a committee to revise the by-laws of the company and report at a future meeting of the board.

Mr. J. S. Chick moved that until the revision of the by-laws to be completed the following amendments to be made to those now in force: That by-law No. 3, entitled directors, be so amended as to require the secretary of the company to give ten days' notice,
599 either personally or by mail, to each of the directors when a meeting of the board is called pursuant to said by-law; also that the same by-law be amended by changing the number of directors from five to seven, and that five shall be necessary to constitute a quorum; which motion was thereupon adopted and said by-laws declared amended accordingly.

On motion, the board adjourned, to meet at the call of the president at Aspen, Colorado.

ASPEN, COLORADO, *July 25th*, 1885.

Pursuant to the call of the president the meeting convened this day at the hour of 8 o'clock p. m.; present, full board.

Minutes of the meetings of the stockholders and of the board of directors read and approved.

The committe- appointed to examine the report of Daniel Sayer, secretary and acting treasurer, reported that they had examined the same and found it correct.

On motion, the report of the committee was adopted and the committee discharged.

On motion, it was ordered that in case any appeal or other bond or undertaking should be necessary in any legal proceeding to which the company was, is, or may be a party now pending or to be hereafter commenced, either Wm. J. Wilson or Daniel Sayer should be, and is, authorized and empowered to sign the name of the company to any such bond or undertaking as its agent for that purpose.

On motion, the plan pursued by I. W. Chatfield and Daniel Sayer in the prosecution of the work for the development of the company's property was approved.

600 Daniel Sayer offered the following resolution: "Resolved, That a committee of five, including the president, be appointed, with full power to act, to determine what further developments shall be made upon the company's property, to purchase machinery and such other apparatus as may be necessary, and to order the sale of sufficient stock to meet the expenditures necessary for the ensuing three months at a price to be fixed by them, not less than seventy-five cents per share, and to be offered to stockholders in proportion to their respective interests;" which resolution was, upon motion of J. S. Chick, duly adopted; in pursuance of which resolution H. M. Holden, Wm. J. Wilson, Edward Dunscomb, E. F. Brown, and I. W. Chatfield were duly selected and appointed such committee. On motion, the board took a recess until July 27th, at 8 o'clock p. m.

ASPEN, *July 27th*, 1885—8 o'clock p. m.

Board met pursuant to adjournment for recess.

Present: As before.

On motion, I. W. Chatfield was appointed superintendent of the company's property during the pleasure of the board.

On motion of J. S. Chick, Howard M. Holden, W. J. Wilson, and Daniel Sayer were appointed an executive committee to manage the company's property between the sessions of the board and subject to its approval. On motion of J. S. Chick, seconded by W. J. Wilson, Daniel Sayer was appointed a committee of one, with full power to act, to purchase an engine and hoister and the articles necessary pertaining to the same for use on the company's property.

601 Edward Dunscomb tendered his resignation as member of the committee of five above mentioned. A motion of J. S. Chick, seconded by W. J. Wilson, to accept said resignation was put to a vote and declared not carried.

The committee appointed to determine the character of work to be done by the company and to provide for the sale of treasury stock made the following report to be entered upon the minutes of the company:

"The committee appointed for the purpose of determining upon the character of work to be done by the company during the near future and upon the amount of money required for that purpose and the method of raising the same report: "That, after full considera-

tion and conference with competent mining men, it has been decided to use the present workings, including the tunnel and incline, to place a boilder at the mouth of the tunnel and an engine at the head of the incline, and to sink on the vein from the bottom of the incline. The committee estimates of the present and early financial needs of the company are as follows:

Shortage August 1st, say	$200
Proposed new work (shaft)	600
August pay-roll	840
Supplies	250
Timber	250
Tools at sale if bought	250
Ore at sale if bought	1,000
Machinery	1,500
Total	$4,890

602 It was thought best to raise 6,000 doll's and to do this by selling six thousand shares of the treasury stock at $1.00 per share, such stock to be first offered to the stockholders *pro rata*.

H. M. HOLDEN, *Chairman*.

The following is the allotment of treasury stock among the stockholders pursuant to the foregoing report:

J. S. Chick on	25,805 shares.	1,407 shares.
Maggie Dunscomb	5,562 "	303 "
Edward Dunscomb, Jr.	98 "	5 "
H. M. Holden	41,990 "	2,288 "
I. W. Chatfield	245 "	13 "
W. J. Wilson	16,567 "	903 "
C. I. Thompson	4,416 "	241 "
D. Sayer	399 "	22 "
Olivia Thompson	7,226 "	394 "
E. E. Chatfield	3,625 "	198 "
A. A. Sayer	3,743 "	204 "
Selby Jones	376 "	20 "
E. F. Brown	30 "	2 "
J. E. Seaver	18 "	
Total	110,100 "	6,000 "

603 LEADVILLE, COLORADO, *December 31st*, 1885.

This day, in pursuance of the following call (and at 10 o'clock a. m.)—

" *Notice.*

A meeting of the board of directors of the Fulton Mining Company is hereby called, to be held at the company's office in Leadville,

Colorado, on Thursday, the 31st day of December, A. D. 1885, at ten o'clock a. m., for the transaction of important business.

HOWARD M. HOLDEN, *President.*
DANIEL SAYER, *Secretary.*
ISAAC W. CHATFIELD."

which was published in the Leadville Chronicle more than ten days prior to said meeting, and notices having been mailed to each of the directors as required by the by-laws, came Howard M. Holden, president; J. S. Chick, I. W. Chatfield, Edward F. Brown, and Daniel Sayer, directors, and the meeting was by the president duly called to order.

The minutes of former meetings were read and approved.

The committee heretofore appointed to revise the by-laws of the company, upon motion, were given further time to report.

I. W. Chatfield tendered his resignation as superintendent, and, upon motion, the same was accepted.

Thereupon Edward F. Brown offered the following resolution:

"Resolved, That the thanks of the company be tendered Mr. I. W. Chatfield for his attention to the affairs of the company while acting superintendent and getting the mine in shape for operations."

604 D. Sayer, having been authorized at the last meeting of the board to purchase suitable machinery for operating the mines, reported that he had purchased an engine-boiler hoister and the necessary appurtenances connected therewith. The report so made was duly approved by the board.

Mr. H. M. Holden, president of the executive committee, reported that in order to provide funds to develop the company's property the executive committee had offered 4,000 shares of the treasury stock at $1.00 per share, and that a portion of the stock had been taken under the offer. Upon motion of Mr. Chick, the action of the executive committee was ratified and approved and the action of the committee in the premises declared the action of the board. Mr. J. S. Chick, treasurer, submitted his report as treasurer, which, upon motion, was referred to a committee consisting of D. Sayer and I. W. Chatfield for examination.

Dan'l Sayer submitted his report as former acting treasurer, which, upon motion, was referred to a committee consisting of Mr. Chick and Mr. Brown. Said committee reported that they had carefully examined said report and found the same correct, and the report of said committee was duly adopted.

The secretary submitted an estimate showing the No. of shares to which each stockholder was entitled in the 4,000 shares offered for sale by the executive committee, which estimate is based upon the ownership of the stock as shown by the books as the same existed on the 15th day of October, A. D. 1885.

Said estimate is as follows:

J. S. Chick, shares	938
H. M. Holden, shares	1,525

	Maggie Dunscomb, shares	202
605	Edward Dunscomb	3
	I. W. Chatfield	9
	W. J. Wilson	602
	C. I. Thompson	161
	Daniel Sayer	15
	Olivia Thompson	262
	E. E. Chatfield	132
	A. A. Sayer	136
	Selby Jones	13
	E. F. Brown	2
	Total shares	4,000

Upon motion, said estimate was duly declared correct.

The secretary submitted a statement showing the total amount of stock issued to Dec. 31st, 1885, and also the amount remaining in the treasury of the issue of 6,000 shares and of the 4,000 shares as follows:

J. S. Chick	24,253	shares.
Maggie Dunscomb	5,562	"
H. M. Holden	47,237	
E. Dunscomb	98	
I. W. Chatfield	245	
W. J. Wilson	18,072	
C. J. Thompson	4,883	
Daniel Sayer	414	
Olivia Thompson	7,620	
Elmer E. Chatfield	3,625	
Anna A. Sayer	3,789	
Selby Jones	376	
Jas. E. Seaver	18	
Ed. F. Brown	32	
Total	116,314	"

606	Capital stock	125,000	shares.
	Issued to date	116,314	"
	Amount not issued on 6,000 shares ordered July 27, '85	539 shares.	
	Amount not issued on 4,000 shares ordered issued	3,247	
		3,786	
	In treasury	8,686	shares.

Statement of stock issued of the 6,000 shares ordered by the committee July 27, –885.

J. S. Chick	1,134 shares.	
J. S. Chick	273	
		1,407 shares.

H. M. Holden	1,629		
H. M. Holden	104		
H. M. Holden	20		
H. M. Holden	196		
H. M. Holden	339		
		2,288	shares.
W. J. Wilson		903	
Olivia Thompson		394	
C. I. Thompson		241	
Daniel Sayer		22	
Anna A. Sayer		204	
E. F. Brown		2	
Total issued		5,461	"
Not issued:			
Maggie Dunscomb	303 shares.		
Edward Dunscomb	5		
I. W. Chatfield	13		
Elmer E. Chatfield	198		
Selby Jones	20		
		539	
Total		6,000	shares.

607 Also statement of stock issued of the 4,000 shares ordered by the committee.

W. J. Wilson	602 shares.		
Daniel Sayer	15 "		
Anna A. Sayer	136		
		753	shares.
Not issued:			
J. S. Chick	938 shares.		
H. M. Holden	1,525		
Maggie Dunscomb	202		
Edward Dunscomb	3		
I. W. Chatfield	9		
C. I. Thompson	161		
Olivia Thompson	261		
Elmer E. Chatfield	132		
Selby Jones	13		
E. F. Brown	2		
		3,247	
Total		4,000	shares.

I. W. Chatfield, late superintendent, reported that he had suspended work on the company's property in consequence of having no funds to meet the present liabilities against the company or for future developments of the company's property and submitted a statement showing the present indebtedness of the company.

Wherefor- Mr. J. S. Chick submitted the following resolution:

That whereas, as shown by statements this day submitted to the board of directors, an indebtedness exists against the company of about eight thousand seven hundred and forty-five ($8,745.00) dollars, and whereas there is no money in the treasury of the
608 company to pay the same, and whereas it is desirable to raise an additional sum of $2,755.00 for the purpose of continuing the work on the company's property:

Therefore resolved, That a sum sufficient to pay the said indebtedness and raise the last-named amount be obtained by means of a loan to be negotiated and secured as hereinafter mentioned. The amount of this loan shall be eleven thousand five hundred ($11,500.00) dollars, which shall be evidenced by twenty-three (23) notes of the company for $500.00 each, payable in four (4) months from the date thereof, and signed by the president in behalf of the company. Said notes shall bear interest at the rate of two (2) per cent. per month from date until paid, and be payable to W. J. Anderson or bearer and payable at the Bank of Kansas City, in the State of Missouri. Said notes shall be secured by a deed of trust on the company's property, to wit, the J. C. Johnston and Chatfield lodes, in Roaring Forks mining district, Pitkin county and State of Colorado, and the improvements and machinery thereon or connected therewith. Said deed of trust shall be executed to George W. Trimble as trustee, and in the event of his death, absence from Lake county, or failure or refusal to act, to the sheriff of Lake county as the successor in trust. It shall contain the usual covenants contained in trust deeds in the State of Colorado, and in case of default in the payment — said notes or any of them it shall provide for the sale of the property conveyed by it by such trustee or his successor in trust upon 30 days' notice by publication in some newspaper published in the city of Leadville; the sale to take place at the front door of the courthouse in the city of Leadville. Said trust deed shall be executed in behalf of the company by its president and attested
609 by its secretary, who shall affix thereto its corporate seal.

The parties furnishing the money for the loan herein provided for shall have the right to purchase all the remaining stock in the treasury of the company at one dollar per share, in such proportions as the money furnished by each one bears to the whole loan. This right may be exercised at any time after the execution of the notes and trust deed and before payment of the notes, and the party exercising such right shall, upon obtaining the stock, credit or cause to be credited the amount thereof upon the note or notes taken by him.

Upon motion, the said resolution was unanimously adopted.

It was moved and seconded that the work on the mines of the company be resumed as early as practicable; upon vote taken the same was adopted.

Mr. J. S. Chick offered the following resolution:

Resolved, That the option heretofore granted to the stockholders to take certain portions of the treasury stock is hereby rescinded and cancelled.

Upon motion of I. W. Chatfield, the said resolution was adopted.

Mr. J. S. Chick offered the following resolution:

Resolved, That Daniel Sayer is hereby appointed managing director of this company and is hereby authorized to visit the mine at least once a month and report to the president any suggestions he may deem necessary, and any such suggestions being approved by the president shall be considered the action of this board.

Upon motion, the said resolution was duly adopted.

610 Upon motion, the salary of the superintendent to be elected, vice Chatfield resigned, was fixed at one hundred and fifty dollars per month until otherwise ordered by the board of directors.

D. Sayer moved that the board proceed to the election of a superintendent; which motion was declared duly adopted.

I. W. Chatfield nominated to said office Edward F. Brown. Upon ballot taken said Edward F. Brown was duly elected.

The committee to whom was referred the report of J. S. Chick, the treasurer, reported that they had duly examined the said report and found the same correct.

The board then adjourned to meet at the office of the company on the 1st day of July, A. D. 1886, at the hour of ten o'clock a. m.

DANIEL SAYER, *Secretary.*

LEADVILLE, COLORADO, *July 1st*, 1886—10 o'clock a m.

The board of directors met pursuant to adjournment.

Present: H. M. Holden, president; William J. Wilson, vice-president; J. S. Chick, treasurer, and Daniel Sayer, secretary, the same being a quorum of the board. On motion, the minutes of the last meeting were read and approved.

William J. Anderson, of Kansas City, Missouri, submitted a proposition to purchase the J. C. Johnston and Chatfield Lode mining claims and all the other property of the company and connected therewith and belonging to the same for the sum of one hundred and twenty-five thousand dollars ($125,000). Whereupon

J. S. Chick offered the following resolution:

611 Whereas William J. Anderson, of Kansas City, Jackson county, Missouri, has submitted to the board a proposition to purchase from the company the J. C. Johnston and Chatfield Lode mining claims, in Roaring Forks mining district, Pitkin county, Colorado, for the sum of one hundred and twenty-five thousand ($125,000) dollars, together with the buildings, machinery, and tools pertaining thereto: Therefore resolved, That the proposition of said Anderson be, and the same is hereby, accepted, and that upon the payment by him into the treasury of the company of said sum of 125,000 dollars the proper deed or deeds of conveyance of the property aforesaid be executed to him in behalf of the company; which deed or deeds shall in such behalf be subscribed by Howard M. Holden, the president of the company, and attested by Daniel Sayer, its secretary, under its corporate seal.

On motion, said resolution was unanimously adopted.

Stockholders' Meeting.

Office of the Fulton Mining Company.

LEADVILLE, COLORADO, *July 21st*, 1886—10 o'clock a. m.

Now, on this day and at this hour, in pursuance of the following notice:

Notice of Meeting.

"Stockholders' meeting.—The annual meeting of the stockholders of the Fulton Mining Company for the election of directors and for all other matter- which may come before the same will be held at the office of the company (being the law office of Thompson &
612 Sayer), in Leadville, Colorado, on Wednesday, the 21st day of July, A. D. 1886, at 10 o'clock in the forenoon.

DANIEL SAYER, *Secretary.*"

which was duly published in the Leadville Evening Chronicle for the period required by law, came J. S. Chick, Selby Jones, Charles I. Thompson, Ed. F. Brown, and Daniel Sayer, stockholders.

Upon motion, J. S. Chick was elected chairman and Daniel Sayer was elected secretary. Dispatches were read from W. J. Wilson and H. M. Holden that they were en route here and were delayed by a washout on the railroad, and it appearing upon computation that a majority of the stock was not represented, upon motion, the meeting adjourned until July 22nd, 1886, at the hour of 10 o'clock a. m.

July 22nd, 1886—10 o'clock a. m.

Meeting convened.

Present: H. M. Holden, J. S. Chick, Selby Jones, Ed. F. Brown, Charles I. Thompson, and Daniel Sayer.

Minutes of meeting of 21st read and upon motion approved.

J. S. Chick, the treasurer of the company, submitted his report of his acts and doings as treasurer for the preceding year, and Ed. F. Brown submitted his report as superintendent for the period he had been so acting.

Both of said reports, upon motion, were submitted to a committee, consisting of H. M. Holden, D. Sayer, Selby Jones, and W. J. Wilson, for examination and inspection.

The meeting then took a recess until 4 o'clock p. m.

4 O'CLOCK P. M.

The meeting convened at this hour.

Present: As above, with W. J. Wilson.

613 C. I. Thompson presented the proxy of Olivia Thompson. W. J. Wilson presented the proxy of May B. Wilson. D. Sayer presented the proxy of Anna A. Sayer. Said proxies were referred to a committee consisting of J. S. Chick and E. F. Brown, who reported to the meeting that they had examined the same; that the same were in due form; and, upon motion, the several per-

sons aforesaid were authorized to vote the stock of the stockholders making said proxies.

All of the stock was found represented except 18 shares belonging to Jas. E. Seaver.

Upon motion, the meeting proceeded to the election of directors, and upon ballot taken the following was ascertained to be the result:

H. M. Holden	received	116,296	votes.
J. S. Chick	"	116,296	"
C. I. Thompson	"	116,296	"
Ed. F. Brown	"	116,296	"
W. J. Wilson	"	116,296	"
Selby Jones	"	116,296	"
Daniel Sayer	"	116,296	"

There being 8,686 shares remaining in the treasury of the company.

The above-named persons were declared duly elected as directors.

Charles I. Thompson introduced the following resolution:

614 "Resolved by the stockholders of the Fulton Mining Company, That the action of the board of directors at their meeting of July 1st, 1886, in making the sale of the company's property to William J. Anderson for one hundred and twenty-five thousand ($125,000.00) dollars, and ordering the deed of conveyance to be executed to him therefor meets with our approval, and said action and sale and the deed executed in pursuance thereof be, and the same are hereby, ratified and confirmed."

Upon vote taken the said resolution was unanimously adopted.

The superintendent submitted a report concerning *concerning* the working and his operations on the mine during his term of office, which report was, upon motion, received and placed upon file.

The superintendent, Edward F. Brown, also submitted a financial statement showing the receipts and disbursements of moneys coming into his hands, which report shows the sum of $10,461.49 still in his hands, which statement was referred to a committee to examine and report to the meeting. The committee appointed to examine said report were J. S. Chick, D. Sayer, and Selby Jones. Said committee reported that they had examined said statement of E. F. Brown and found the same correct. Upon motion, the said report was accepted and the committee discharged.

The committee to whom was referred the annual report of the treasurer made a verbal report that there was in the hands of the treasurer $2,282.35 and 319 shares of stock which has not yet been paid for; that they had examined the report of the treasurer and found the same correct. Upon motion the report of the committee was received and adopted and the committee discharged.

615 *Directors' Meeting.*

Office of the Fulton Mining Company.

LEADVILLE, COLORADO, *July 22nd*, 1886—4 o'clock, p. m.

The board of directors met on this day and hour in pursuance of the direction of the president.

Present: H. M. Holden, J. S. Chick, W. J. Wilson, Ed. F. Brown, C. I. Thompson, Selby Jones, and D. Sayer.

H. M. Holden was elected chairman of the meeting and Daniel Sayer secretary.

Upon motion, the board proceeded to elect officers and upon ballot taken the following officers were elected:

President, H. M. Holden.

Vice-president, Wm. J. Wilson.

Secretary, Daniel Sayer.

Treasurer, J. S. Chick.

Superintendent, Ed. F. Brown.

Whereupon the president announced that the board was ready to proceed with business.

Selby Jones moved that the minutes of the meeting of the board held on July 1st be read, which motion was carried and the minutes read.

Selby Jones then offered the following resolution: That the minutes of said meeting be approved, and that the action of the board of directors at the meeting held July 1st, 1886, in making sale of the company's property to William J. Anderson for the sum
616 $125,000.00 and the action of the president and secretary in executing the deed to said W. J. Anderson be, and the same is hereby, confirmed, ratified, and approved, which motion was seconded by Wm. J. Wilson. Upon motion, the said resolution was unanimously carried.

A bill of I. W. Chatfield for the sum of 989.00 was presented for payment to the board. Said bill was referred to Ed. F. Brown, superintendent, with instructions to settle upon such terms as he might deem just and equitable to both parties.

Upon motion, Ed. F. Brown was instructed to settle with Mess. Plumb & Taylor for legal services rendered to the company, no amount being fixed by them in their claim for services.

The bill of Thompson & Sayer for legal services, amounting to $1,270.20, and the bill of D. Sayer for services as secretary, amounting to $500.00, was referred to a committee consisting of Mess. Chick, Holden, Wilson, Brown, and Jones.

C. I. Thompson moved that the 8,686 shares of treasury stock remaining in the treasury of the company be distributed among the stockholders in proportion to their present holdings. The said motion was duly seconded, and being submitted to a vote was duly carried.

Upon motion, E. F. Brown was instructed to figure out the amount

of stock to which each stockholder is entitled under the foregoing resolution.

C. I. Thompson moved that E. F. Brown be entitled to one hundred dollars per month additional compensation for services as superintendent from the 1st day of last May; which motion, upon submission to vote, was duly carried.

Thereupon the board took a recess until 8 o'clock p. m.

617 8 O'CLOCK P. M.

The board met pursuant to the order made at recess.

Present: All the members except the president, who was reported indisposed; and thereupon the board adjourned until July 23rd, 1886, at 10 o'clock a. m.

JULY 23RD, 1886—10 o'clock a. m.

The board met pursuant to adjournment.

Present: All the members and officers.

The committee to whom was referred the bill of Thompson & Sayer for legal services and the bill of Daniel Sayer, secretary, reported that there be paid on the bill of Thompson & Sayer the sum of $1,170.20 and on the bill of Daniel Sayer, secretary, the sum of five hundred dollars. The report of the committee was accepted, the committee discharged, and the amounts aforesaid directed to be paid.

E. F. Brown represented that he had computed the amount of treasury stock due to the several stockholders, and submitted his computation to the board, and he thereupon offered the following resolution:

Resolved, That the treasury stock remaining in the treasury, amounting to 8,686 shares, be divided among the stockholders according to their holdings—that is to say, to—

H. M. Holden on	40,665 shares,	3,037 shares.
H. M. Holden on	20 "	2 "
Frederica Brown on	6,539 "	488 "
J. S. Chick on	17,100 "	1,277 "
J. S. Chick on	10,791 "	806 "
C. D. French on	198 "	15 "
A. R. French	198 "	15 "
618 O. H. Dean	3,802 "	284 "
Selby Jones	376 "	28 "
Daniel Sayer	5,000 "	373 "
C. I. Thompson	12,503 "	934 "
W. J. Wilson	19,072 "	1,424 "
J. E. Seaver	18 "	1 "
Ed. F. Brown	32 "	2 "
	116,314	8,686

Of the above amount allotted to Frederica Brown 1,539 shares of her stock stands on the books of the company in the name of H. M.

Holden, and by his request the portion due to her on the same was made to said Frederica Brown. The amount due to Mrs. May B. Wilson was at her request issued to W. J. Wilson. The amount due to Olivia Thomson was at her request issued to C. I. Thomson. The amount due to Anna A. Sayer was at her request issued to Dan'l Sayer.

J. S. Chick offered the following resolution:

Whereas the Fulton Mining Company has recovered judgment in the circuit court of the United States for the district of Colorado against the claimants of the Defiance lode, in Roaring Fork mining district, Pitkin county, State of Colorado, for that portion of the Chatfield lode in conflict with the *the* said Defiance lode in pursuance of an adverse claim filed by the company against the application of the claimants of said Defiance lode for a United States patent thereto, such judgment having been secured in a suit brought by the company in support of its adverse claim; and whereas an approved survey of the portion of said Chatfield claim in conflict with said Defiance claim has been procured from the surveyor
619 general of Colorado in conformity with the requirements of the Commissioner of the General Land Office; and whereas all other things have been done in the premises required by the rules of said land office and the instructions of the Commissioner thereof:

Therefore resolved, That Daniel Sayer be, and he is hereby, appointed the agent and attorney of this company for and in behalf of this company to make entry of said portion of said Chatfield lode so as aforesaid awarded to this company by said judgment of said court in the United States land office at Glenwood Springs, Colorado, and for that purpose to execute in behalf of and in the name of said company all such instruments, papers, and writings as may be requisite or necessary for the purpose of making and completing such entry of such portion of said claim.

Unanimously adopted upon motion of Wilson.

DANIEL SAYER, *Secretary.*
H. M. HOLDEN, *Pres'd't.*

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

J. C. Ball, being first duly sworn, on oath says that he made the foregoing transcript and copy of a certain book, entitled "The Fulton Mining Company Record," containing the records of the proceedings and transactions of said company; that said copy was by him carefully compared with said record book, and is a true, full, and correct copy of the same.

J. C. BALL.

Subscribed and sworn to before me this 30th day of April, A. D. 1888.

[SEAL.] ALFRED L. HODDER,
Notary Public.

620 (Copy.) EXHIBIT J 1. John W. Webster, Examiner.

List of the stockholders of the Fulton Mining Company showing the amount of stock held by each stockholder respectively, as shown by the books of the secretary, on the 11th day of Sept., 1886.

Name.	Amount.
H. M. Holden	45,163 shares.
J. S. Chick	29,974
William J. Wilson	20,271
Chas. I. Thompson	5,817
Daniel Sayer	787
Olivia Thomson	7,620
Anna A. Sayer	4,586
Selby Jones	404
Jas. E. Seaver	19
Ed. F. Brown	34
May B. Wilson	225
A. B. French	213
C. D. French	213
O. H. Dean	4,086
Frederica Brown	5,488
Jacob J. Meyers	100
Total	125,000 "

Number.	Shares.	Owner.	Date of issue.	Shares.	To whom transferred.	Date.
621						
1	8,500	J. S. Chick	Sept. 26, '82			
53	6,000	"	M'ch 10, '83			
85	1,305	"	May 27, '85			
113	10,000	"	July 27, '85		Cancelled, & Nos. 131 & 132 issued in lieu.	
116	1,134	"	Aug. 11, '85			
117	273	"	" 11, "	273	H. M. Holden	July 22, '86.
129	1,937	"	Sept. 5, '85			
130	104	"	" 5, '85			
131	5,000	"	Oct. 10, '85			
140	211	"	April 10, '86			
141	20	"	" 10, "			
142	1,125	"	" 10, "			
143	225	"	" 10, "			
145	2,330	"	" 19, "			
160	1,277	"	July 23, '86			
161	806	"	July 23, '86			
	29,974					
2	4,000	Maggie Dunscomb	Sept. 26, '82	4,000	Destroyed by fire & cancelled and 554 issued in lieu thereof.	
33	500	"	" 26, '82		Cancelled.	
34	83⅓	"	" 26, '82		Cancelled.	
54	4,000	"	June 6, '83		Cancelled	July 22, '85.
65	7,188⅓	"	Feb. 9, '85		Cancelled.	
68	262	"	Feb. 9, '85		Cancelled	April 19, '85.
99	831	"	May 27, '85	831	Olivia Thomson	July 22, '85.
100	172	"	" 27, '85	172	Olivia Thomson	July 22, '85.
102	4,300	"	" 28, '85		Cancelled	April 19, '86.
622						
106	1,000	Maggie Dunscomb	July 22, '85	1,000	Olivia Thomson	July 30, '85.
107	1,000	"	"	1,000	Olivia Thomson	July 30, '85.
108	1,000	"	"	1,000	Olivia Thomson	July 30, '85.
109	500	"	"	500	W. J. Wilson	July 20, '86.
110	500	"	"	500	W. J. Wilson	July 20, '86.

No. of certificate.	Shares.	Owner.	Date of issue.	Shares.	To whom transferred.	Date.
3	50	E. Dunscomb, Sr.....	Sept. 26, '82	.....	Cancelled.	
4	50	"	"	.....	"	
5	50	"	"	.....	"	
6	50	"	"	.....	"	
7	50	"	"	.....	"	
8	50	"	"	.....	"	
9	50	"	"	.....	"	
10	50	"	"	.....	"	
11	50	"	"	.....	"	
12	50	"	"	.....	"	
13	50	"	"	.....	"	
14	50	"	"	.....	"	
15	50	"	"	.....	"	
16	50	"	"	.....	"	
17	50	"	"	.....	"	
18	50	"	"	.....	"	
19	50	"	"	.....	"	
20	50	"	"	.....	"	
21	50	"	"	.....	"	
22	50	"	"	.....	"	
23	50	"	"	.....	"	
623						
24	50	"	"	.....	"	
25	50	"	"	.....	"	
26	50	"	"	.....	"	
27	50	"	"	.....	"	
28	50	"	"	.....	"	
29	50	"	"	.....	"	
30	50	"	"	.....	"	
31	50	"	"	.....	"	
32	50	"	"	.....	"	

No. of certificate.	Shares.	Owner.	Date of issue.	Shares.	To whom transferred.	Date.
35	5,000	Howard M. Holden...	Dec. 11, '82			
36	5,000	" ...	"			
37	5,000	" ...	"			
38	5,000	" ...	"			
39	5,000	" ...	"			
40	1,000	" ...	"			
41	1,000	" ...	"			
42	1,000	" ...	"			
43	1,000	" ...	"			
44	1,000	" ...	"			
45	1,250	" ...	"			
46	3,125	" ...	"	3,125	O. H. Dean.....	July 22, '86.
47	1,562	" ...	"			
48	1,562	" ...	"	.....	Cancelled & 129 issued in lieu.	
49	1	" ...	"			
50	200	" ...	Dec. 29, '82	.....	Cancelled & No. 129 issued in lieu.	
51	200	" ...	"	200	O. H. Dean.....	July 22, '86.
624						
52	300	" ...	"			
80	376	" ...	May 27, '85	376	A. R. & C. D. French.....	July 22, '86.
86	2,391	" ...	" 27, '85			
87	281	" ...	"	281	O. H. Dean	July 22, '86.
88	562	" ...	"			
89	141	" ...	"	.....	Cancelled & No. 129 issued in lieu.	
90	34	" ...	"	.....	Cancelled & No. 129 issued in lieu.	
91½	1	" ...	"			
91	34	" ...	"	.....	Cancelled & Nos. 111 & 112 issued in lieu.	
112	4	" ...	July 23, '85			
118	1,629	" ...	Aug. 11, '85			
119	104	" ...	"	.....	Cancelled & No. 130 issued in lieu.	
120	20	" ...	"	20	A. R. & C. D. French	July 22, '86.
121	196	" ...	"	196	O. H. Dean	July 22, '86.

No. of certificate.	Shares.	Owner.	Date of issue.	Shares.	To whom transferred.	Date.
122	339	Howard M. Holden...	Aug. 11, '85	.....	Cancelled.	
132	5,000	" ...	Oct. 10, '85	5,000	Transferred to Frederica Brown.	
138	1,582	" ...	April 10, '86			
144	2,330	" ...	" 19, '86			
148	273	" ...	July 22, '86	....	Cancelled.....	Dec. 17, 1886.
154	20	" ...	July 23, '86			
155	100	" ...	"			
156	119	" ...	"			
157	3,037	" ...	"			
158	2	" ...	"			
172	219	" ...	Dec. 17, '86			
	45,109					
625						
55	3,298	E. Dunscomb, Jr.....	June 6, '83	.....	Cancelled.	
103	98	"	May 28, '85	.....	Cancelled.....	April 19, '86.
56	2,474	I. W. Chatfield.....	June 6, '83	2,474	Cancelled, Olivia Thomson.	Dec. 22, '84.
62	12,500	"	Dec. 19, '84	12,500	Elmer E. Chatfield.....	Feb. 25, '85.
70	225	"	Feb. 9, '85	.....	Levied upon, cancelled, and No. 143 issued in lieu.	
75	5,309	"	" 9, '85	5,309	Elmer E. Chatfield.....	Feb. 25, '85.
98	20	"	May 27, '85	.....	Levied upon, cancelled, & No. 141 issued in lieu.	
57	2,474	W. J. Wilson.....	June 6, '83	.....	May B. Wilson	Mar. 11, 1886.
69	225	"	Feb. 9, '85			
84	12,500	"	Mar. 27, '85			
96	1,368	"	"			
123	903	"	Aug. 28, '85			
136	602	"	Dec. 5, '85			
146	500	"	July 20, '86			
147	500	"	"			
168	1,424	"	July 23, '86			
170	903	"	Sept. 10, '86	.....	Certif. No. 123 found and this certif. cancelled Sept. 20, '86.	
	20,271					
626						
58	618	Chas. I. Thomson..	June 6, '83			
60	3,125	" ..	"			
67	274	" ..	Feb. 9, '85			
71	56	" ..	"			
73	4,551	" ..	"	.....	Cancelled.	
81	1	" ..	May 27, '85			
95	342	" ..	"			
125	241	" ..	Aug. 28, '85			
135	226	" ..	Oct. 15, '85			
167	934	" ..	July 23, '86			
	5,817					

No. of certificate.	Shares.	Owner.	Date of issue.	Shares.	To whom transferred.	
59	618	Daniel Sayer.....	June 6, '83	618	Anna A. Sayer.....	M'ch 9, '85.
61	3,125	"	"	3,125	"	"
72	56	"	Feb. 9, '85			
74	4,552	"	"	4,552	"	"
82	1	"	May 27, '85			
92	5	"	"			
93	337	"	"			
126	22	"	Aug. 28, '85	.....	Cancelled & No. 135 issued in lieu of Nos. 126 & 127.	
134	15	"	Oct. 10, '85			
166	373	"	July 23, '86			
	787					

No. of certificate.	Shares.	Owner.	Date of issue.	Shares.	To whom transferred.
627					
63	400	Olivia Thomson.....	Dec. 20, '84		
64	2,474	"	Feb. 3, '85		
66	126	"	Feb. 9, '85		
94	223	"	May 27, '85		
104	841	"	July 22, '85		
105	172	"	"		
115	3,000	"	July 30, '85		
124	394	"	Aug. 28, '85		
	7,620				
76	12,500	Elmer E. Chatfield..	Feb. 25, '85	.....	Cancelled, Nos. 113, 10,000 shares; No. 114, 2,500 shares.
77	5,309	" ..	"	.....	Cancelled.
97	1,125	" ..	May 27, '85	.....	Cancelled & No. 142 issued in lieu.
114	2,500	" ..	July 27, '85	.....	Cancelled & Nos. 138, 139, & 140 issued in lieu.
78	8,295	Anna A. Sayer.....	M'ch 9, '85	4,552	Shares assigned to company cancelled.
101	3,743	"	.....	3,743	Cancelled to Anna A. Sayer.
127	204	"	Aug. 28, '85	.....	Cancelled & No. 135 & No. 126 issued in lieu of this.
133	136	"	Oct. 10, '85		
139	707	"	April 10, '86		
	4,586				
79	376	Selby Jones.....	May 27, '85		
165	28	"	July 23, '86		
173	54	"	Dec. 17, '86		
	458				
628					
83	18	Jas. E. Seaver.....	May 27, '85		
169	1	"	July 23, '86		
	19				
111	30	Ed. F. Brown.....	July 23, '85		
128	2	"	Sept. 4, '85		
171	2	"	" 11, '86		
137	225	May B. Wilson.....	May 11, '86		
149	198	A. R. French.....	July 22, '86		
163	15	"	July 23, '86		
	213				
150	198	C. D. French	July 22, '86		
162	15	"	July 23, '86		
	213				
151	3,802	O. H. Dean.....	July 22, '86		
164	284	"	July 23, '86		
	4,086				
152	5,000	Frederica Brown...	July 23, '86		
159	488	"	"		
	5,488				
153	100	Jacob J. Meyers.....	July 23, '86		

629 STATE OF COLORADO, } ss:
County of Arapahoe, }

J. C. Ball, being first duly sworn, on oath says that he made the foregoing transcript and copy of a certain book entitled "The Fulton Mining Company Stock Register," containing the records of the stock transactions of said company; that said copy was by him carefully compared with said stock register and is a full, true, correct copy of the same.

JESSE C. BALL.

Subscribed and sworn to before me this 20th day of April, A. D. 1888.

ALFRED L. HODDER,
Notary Public.

[SEAL.]

(Copy.)

The Fulton Mining Co.'s Stock Register. J. 1.

630 EXHIBIT K 1. John W. Webster, Examiner.

Date of certificate, Jan'y 11, 1881.
No. of certificate, 7.
No. shares, 14,583⅓.
To whom issued, Edward Dunscomb.
Issued in lieu of certificate No. —.

[Written across the face in red ink:] Cancelled.

Not detached.

(Incorporated under the laws of the State of Colorado.)

(No. 7.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Edward Dunscomb is the owner of fourteen thousand five hundred eighty-three ⅓ shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature of its president and secretary, at Leadville, Colorado, this eleventh day of January, 1881.

EDWARD DUNSCOMB, *President.*
—— ——, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness my hand and seal this 14th day of February, A. D. 1881.

EDWARD DUNSCOMB.

Witness present:

—— ——.

631 Date of certificate, July 11, 1881.
No. of certificate, two.
No. shares, 12.
To whom issued, —.
Issued in lieu of certificate No. —.

[Written across the face in red ink:] Error.

Not detached.

(Incorporated under the laws of the State of Colorado.)

(No. 2.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

*This is to certify that William J. Wilson is the owner of one hundred twenty-five thousand shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature of its president and secretary, at Leadville, Colorado, this eleventh day of January, 1881.

EDWARD DUNSCOMB, *President.*
—— ——, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Error.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:

—— ——.

*Certificate erased in copy.

632 Date of certificate, Jan'y 11, 1881.
No. of certificate, 3.
No. shares, 12,500.
To whom issued, Wm. J. Wilson.
Issued in lieu of certificate No. —.
Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 3.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that William J. Wilson is the owner of twelve thousand five hundred shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature of its president and secretary, at Leadville, Colorado, this eleventh day of January, 1881.

[SEAL.]

EDWARD DUNSCOMB, *President.*
—— ——, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:
—— ——.

633 Date of certificate, —— —, 18—.
No. of certificate, 4.
No. shares, —.
To whom issued, —.
Issued in lieu of certificate No. —.

[Written across the face in red ink:] Cancelled.

Not detached.

(Incorporated under the laws of the State of Colorado.)

(No. 4.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that William J. Wilson is the owner of — shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature of its president and secretary, at Leadville, Colorado, this — day of ——, A. D. 188–.

EDWARD DUNSCOMB, *President.*
—— ——, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:
—— ——.

634 Date of certificate, Jan'y 11, 1881.
No. of certificate, 5.
No. shares, 12,500.
To whom issued, Isaac W. Chatfield.
Issued in lieu of certificate No. —.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 5.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Isaac W. Chatfield is the owner of twelve thousand five hundred shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature of its president and secretary, at Leadville, Colorado, this eleventh day of January, 1881.

EDWARD DUNSCOMB, *President.*
—— ——, *Secretary.*

(Stock non-assessable.)

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:
—— ——.

635 Date of certificate, Jan'y 11, 1881.
No. of certificate, 6.
No. shares, 3,125.
To whom issued, Daniel Sayer.
Issued in lieu of certificate No. —.

[Written across the face in red ink:] Cancelled.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 6.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Daniel Sayer is the owner of thirty-one hundred & twenty-five shares of the capital stock of the Fulton

Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature of its president and secretary, at Leadville, Colorado, this eleventh day of January, 1881. [SEAL.]

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:

—— ——.

636 Date of certificate, Jan'y 11, 1881.
No. of certificate, 7.
No. of shares, 3,125.
To whom issued, Chas. I. Thompson.
Issued in lieu of certificate No. —.

[Written across the face in red ink:] Cancelled.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 7.) (Shares, 3,125.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Charles I. Thomson is the owner of thirty-one hundred & twenty-five shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signatures of its president and secretary, at Leadville, Colorado, this eleventh day of January, 1881. [SEAL.]

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby con-

stitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:

—— ——.

637 Date of certificate, April 9, 1881.
No. of certificate, 8.
No. shares, 376.
To whom issued, James E. Seaver.
Issued in lieu of certificate No. —.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 8.) (Shares, 376.)

The Fulton Mining Co,

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that James E. Seaver is the owner of three hundred & seventy-six shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signature- of [SEAL.] its president and secretary, at Leadville, Colorado, this ninth day of April, 1881.

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

For value received I hereby sell, assign, and transfer to Selby Jones — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — to transfer the same on the books of the company, with full power of substitution in the premises.

Witness my hand and seal this 27th day of May, A. D. 1885.

JAMES E. SEAVER.

Witness present:

—— ——.

638 Date of certificate, Feb'y 14, 1881.
No. of certificate, 9.
No. shares, 12,500.
To whom issued, Maggie Dunscomb.
Issued in lieu of certificate No. 1.

[Written across the face in red ink:] Cancelled.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 9.) (Shares, 12,500.)

The Fulton Mining Co.

Capital, 1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Maggie Dunscomb is the owner of twelve thousand five hundred shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signatures of
[SEAL.] its president and secretary, at Leadville, Colorado, this fourteenth day of February, 1881.

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received I hereby sell, assign, and transfer to J. S. Chick — shares of the within-mentioned stock, and do hereby constitute and appoint George R. Fisher attorney irrevocable for me and in my name —, to transfer the same on the books of the company with full power of substitution in the premises.

Witness my hand and seal this first day of June, A. D. 1882.

MAGGIE DUNSCOMB.
EDWARD DUNSCOMB.

Witness present:
MATT. FOSTER.

639 Date of certificate, Feb'y 14, 1881.
No. of certificate, 10.
No. shares, 2,083⅓.
To whom issued, Edward Dunscomb.
Issued in lieu of certificate No. 1.

[Written across the face in red ink:] Cancelled.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 10.) (Shares, 2,083⅓.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Edward Dunscomb is the owner of two thousand eighty-three & ⅓ shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

[SEAL.] Witness the seal of said company and the signatures of its president and secretary, at Leadville, Colorado, this fourteenth day of February, 1881.

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of —— A. D. 188–.

EDWARD DUNSCOMB.

Witness present:
—— ——.

640 Date of certificate, April 9, 1881.
No. of certificate, 11.
No. shares, 376.
To whom issued, James E. Seaver.
Issued in lieu of certificate No. —.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 11.) (Shares, 376.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that James E. Seaver is the owner of three hundred & seventy-six shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signatures of
[SEAL.] its president and secretary, at Leadville, Colorado, this ninth day of April, 1881.

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

For value received I hereby sell, assign, and transfer to Howard M. Holden all shares of the within-mentioned stock, and do hereby constitute and appoint H. M. Holden attorney irrevocable for me and in my name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness my hand and seal this 22 day of May, A. D. 1885.

JAMES E. SEAVER.

Witness present:
A. R. FRENCH.

641 Date of certificate, April 9, 1881.
No. of certificate, 12.
No. shares, 18.
To whom issued, James E. Seaver.
Issued in lieu of certificate No. —.

Stub filled out, but certificate not in book.

(Incorporated under the laws of the State of Colorado.)

(No. —.) (Shares, —.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that —— —— is the owner of — shares of the capital stock of the Fulton Mining Company, full paid, transferable

only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signatures of its president and secretary, at Leadville, Colorado, this — day of ——, A. D. 188–.

——. ——, *President.*
—— ——, *Secretary.*

(Stock non-assessable.)

For value received — hereby sell, assign, and transfer to —— —— — shares of the within-mentioned stock, and do hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness — hand and seal this — day of ——, A. D. 188–.

—— ——.

Witness present:

—— ——.

642 Date of certificate, April 9, 1881.
No. of certificate, 13.
No. of shares, 6,000.
To whom issued, Bella R. Seaver, ac. James E. Seaver.
Issued in lieu of certificate No. —.

[Written across the face in red ink:] Cancelled.

Detached & returned.

(Incorporated under the laws of the State of Colorado.)

(No. 13.) (Shares, 6,000.)

The Fulton Mining Co.

Capital, $1,000,000. 100,000 shares, $10 each.

State of Colorado.

This is to certify that Bella R. Seaver is the owner of six thousand shares of the capital stock of the Fulton Mining Company, full paid, transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Witness the seal of said company and the signatures of [SEAL.] its president and secretary, at Leadville, Colorado, this ninth day of April, 1881.

EDWARD DUNSCOMB, *President.*
DANIEL SAYER, *Secretary.*

(Stock non-assessable.)

[Written across the face in red ink:] Cancelled.

For value received — hereby sell, assign, and transfer to J. S. Chick six thousand shares of the within-mentioned stock, and do

hereby constitute and appoint —— —— attorney irrevocable for — and in — name —, to transfer the same on the books of the company, with full power of substitution in the premises.

Witness my hand and seal this 5 day of March, A. D. 1883.

BELLA R. SEAVER.

Witness present:
W. J. ANDERSON.

(Indorsed:) No. 2244. John C. Johnston, complainant, *vs.* The Standard Mining Company of Kansas *et als.*, defendants. Testimony and proofs taken before John W. Webster, examiner. Filed Nov. 9, 1888. William A. Willard, clerk.

643 And afterwards and on, to wit, the 12th day of November, A. D. 1888, there was filed in said court and in said cause a certain stipulation, and the said stipulation is in words and figures as follows, to wit:

Stipulation to Admit Documentary Evidence — Behalf Complainant.

UNITED STATES OF AMERICA, }
State of Colorado. }

In the Circuit Court of the United States for the District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants. } Cause No. 2244.

It is hereby stipulated that the following-described documentary evidence may be filed by the complainant in rebuttal without objection, except as to the materiality & relevancy of the subject-matter of said evidence, to wit: Deed of James E. Seaver to Mame A. Underwood, marked Exhibit 1; also deed — James E. Seaver to Selby Jones, marked Exhibit 2; also affidavit of John W. O'Connell, with attached certificates, marked Exhibit 3. This affidavit shall be treated as the deposition of said O'Connell.

C. S. WILSON,
For Compl'nt.
CHAS. I. THOMSON,
For Def'ts.

(Endorsed:) No. 2244. U. S. circuit court Colorado. Jno. C. Johnston, comp't, *vs.* The Standard M'ng Co. of Kans. C'y *et al.*, def'ts. Stipulation for admission of doc. evidence. Filed Nov. 12, 1888. William A. Willard, clerk.

644 And the exhibits referred to in the stipulation and marked respectively Exhibit 1, Exhibit 2, and Exhibit 3 are in words and figures as follows, to wit:

EXHIBIT 1.

Deed.

Seaver
to
Underwood.

This indenture, made the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and eighty-one between James E. Seavers of the county of Jackson and State of Colorado, party of the first part, and Mame A. Underwood of the county of Jackson and State of Colorado, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to her heirs and assigns an undivided ninety-sixth ($\frac{1}{96}$) interest in the Smuggler Two lode, ledge or mineral deposit located and situated near Aspen city Roaring Fork mining district, Gunnison county, Colorado.

An undivided one ninety-sixth ($\frac{1}{96}$) interest in the J. C. Johnston lode, ledge or mineral deposit, located and situated near Aspen city Roaring Fork mining district, Gunnison county, Colorado.

Both locations covering the same ground and more fully described in location certificate filed in the recorder's office at Gunnison county, Colorado.

645 Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, her heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES E. SEVERS. [SEAL.]

Signed, sealed and delivered in presence of—

——— ———.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, Amos H. Kogy, a notary public in and for said county, in the State aforesaid, do hereby certify that James E. Severs, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

646 Given under my hand and notarial seal this twenty-fifth day of March, A. D. 1881.

[SEAL.] Commissioned and qualified for term ending August 25th, 1882.

AMOS H. KOGY,
Notary Public.

STATE OF COLORADO, } ss:
County of Gunnison, }

I, D. C. Scribner, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of deed, James E. Seavers to Mame A. Underwood, as the same appears in the records of Gunnison county, in Book 26, on page 138.

Witness my hand and official seal, at Gunnison, this 10 day of September, 1888.

D. C. SCRIBNER,
County Clerk and Recorder,
[SEAL.] By H. BRAGG, *Deputy.*

(Endorsed:) Ex. "1." No. 2244. U. S. court. No. 14142. Mining deed, James E. Seavers to Mame A. Underwood.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 3rd day of June, A. D. 1881, at 10 o'clock a. m, in my office, and duly recorded in Book —, page No. —.

J. R. HINKLE, *Recorder,*
By J. C. BOHLE, *Deputy.*

Fee, $2.00.
Filed Nov. 10, 1888.

WILLIAM A. WILLARD, *Clerk.*

(Admitted by stipulation.)

647 EXHIBIT 2.

Deed.

Seaver to Jones.

This indenture, made the twenty-fifth day of March in the year of our Lord one thousand eight hundred and eighty-one between James E. Seavers of the county of Jackson and State of Missouri, party of the first part, and Selby Jones, of the county of Jackson and State of Missouri, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one $\frac{00}{100}$ dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to — heirs and assigns an undivided one ninety-sixth ($\frac{1}{96}$) interest in the Smuggler Two lode, ledge or mineral deposit located and situated near Aspen city Roaring Fork mining district, Gunnison county, Colorado, or an undivided one ninety-sixth ($\frac{1}{96}$) interest in the J. C. Johnston lode, ledge or mineral deposit, located and situated near Aspen city, Gunnison county Roaring Fork mining district, Colorado, both locations covering the same ground, and more fully described in the location certificate, filed in the recorder's office at Gunnison county, Colorado. Together with all the dips, spurs and angles, and also all the metals, ore, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

648

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES E. SEAVER. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, Amos H. Kragy, a notary public in and for said county, in the State aforesaid, do hereby certify that James E. Seavers, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-fifth day of March, A. D. 1881.

[SEAL.] Commissioned and qualified for the term ending August 25th, 1882.

AMOS H. KAGY,
Notary Public.

649 STATE OF COLORADO, } ss:
County of Gunnison, }

I, D. C. Scribner, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify the within and foregoing is a full, true, and correct copy of mining deed, James E. Seaver to Selby Jones, as the same appears in the records of Gunnison county in Book 26, on page 137.

Witness my hand and official seal, at Gunnison, this 1st day of October, 1888.

[SEAL.]

D. C. SCRIBNER,
County Clerk and Recorder.

(Endorsed:) "Ex. 2." No. 2244. U. S. court. Copy. No. 14141. Mining deed, James E. Seaver to Selby Jones.

STATE OF COLORADO, } ss:
County of Gunnison, }

I hereby certify that this deed was filed for record on the 3rd day of June, A. D. 1881, at 10 o'clock a. m., in my office and duly recorded in Book 26, page No. 137.

J. R. HINKLE, *Recorder,*
By J. C. BOHLE, *Deputy.*

Filed Nov. 10, 1888.

WILLIAM A. WILLARD, *Clerk.*

(Admitted by stipulation.)

EXHIBIT 3, AFFIDAVIT O'CONNELL.

STATE OF COLORADO, } ss:
County of Pitkin, }

John W. O'Connell, being first duly sworn, on his oath states that he now resides in Aspen, Colorado, and that he resided in Aspen afore-

said from the month of April, 1880, until September, 1881,
650 when he went to Ashcroft, Colorado, and resided there until the month of October, 1884, when he returned to Aspen, where he has lived ever since; that during the summer and fall of 1880 he was deputy sheriff of Gunnison county under George Yule, sheriff of said county; that on or about the 20th day of August, 1880, he was in Leadville, Colorado, and was there appointed by J. P. De Mattos, then a justice of the peace for Lake county, as special constable to serve a certain warrant for the arrest of one James C. Acheson, charged with false pretenses upon the complaint of one George A. Crittenden; that thereupon affiant brought said warrant to Aspen, where said Acheson was supposed to be, but that said Acheson was not in Aspen at that time; that immediately thereafter, on the following day, affiant returned to Leadville and met said Acheson on the way, at Independence, Colorado; that affiant was about to arrest said Acheson on said warrant, but that said Acheson begged him not to do so, stating that he had a party of friends with him from Kansas City to whom he expected to make a sale of mining property in Aspen, and that he would straighten everything up in a few days; that upon said representations affiant allowed said Acheson to go upon his personal assurance that he would be and appear before said Justice De Mattos at Leadville within a very few days.

Affiant further says that the offence which was charged against the said Acheson, as stated in the warrant, and also as stated to affiant by Mr. Acheson and by Mr. Crittenden aforesaid, was that said Acheson had drawn a bank check for the sum of $300.00, payable to the order of said Crittenden, with intent to defraud said Crittenden, which check was dishonored and unpaid by said bank.

651 Affiant further says that the proceedings mentioned in the attached certificate of the docket entry of said De Mattos, J. P., are the same proceedings on which said Acheson was arrested as aforesaid.

JOHN W. O'CONNELL.

Subscribed and sworn to before me this 31st day of October, A. D. 1888.

[SEAL.] F. G. SALMON,
Notary Public.

STATE OF COLORADO, } ss:
Lake County, }

Peter J. Quigly, being duly sworn, on oath deposes and says that he is a justice of the peace in and for Lake county, State of Colorado, and that he has made diligent search for the original papers in said cause, and that the said papers cannot be found, and also says that he is the successor in office of James P. De Mattos, a former justice of the peace of Lake county.

PETER J. QUIGLY.

Sworn — and subscribed before me this 3rd day of November, A. D. 1888.

[SEAL.]

EDW'D DALE,
County Clerk Lake Co., Colorado,
By R. F. CAFFREY, *Deputy.*

STATE OF COLORADO, } ss:
County of Lake, }

In Justice Court, before James P. De Mattos, Justice.

THE PEOPLE OF THE STATE OF COLORADO, Plaintiffs,
vs.
J. C. ACHESON, Def't.
} Charge: False Pretenses.

652 August 20th, 1880.—The complaint and information of G. A. Crittenden filed and a warrant issued for the arrest and apprehension of J. C. Acheson and placed in the hands of Constable James Shire. Now, September 28th, 1880, warrant returned and indorsed: "Defendant not found in my county. P. M. O'Hara, constable."

JAMES P. DE MATTOS, *J. P.*

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings in the above-entitled cause as it appears on the docket of James P. De Mattos, justice of the peace, and I also certify that the said docket is now in my possession as successor of said justice.

PETER J. QUIGLY, *J. P.*

STATE OF COLORADO, } ss:
County of Lake, }

I, Edw'd Dale, county clerk in and for said county, do hereby certify that P. J. Quigly, Esq., whose name is subscribed to the proof or acknowledgement of the annexed instrument in writing, was at the time of taking such proof or acknowledgement a justice of the peace in and for said county, duly commissioned, sworn, and acting as such, and authorized to take the same, and, further, that I am acquainted with his handwriting and verily believe that the signature to the said proof or acknowledgement is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of Colorado.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Leadville, in said county, this 22nd day of October, A. D. 1888.

EDW'D DALE,
County Clerk.

653 (Endorsed:) "Ex. 3." No. 2244. U. S. court. Affidavit of John W. O'Connell. Filed Nov. 12, 1888. William A. Willard, clerk. Stipt. read as evidence. (Admitted by stipulation.)

And afterwards and on the same day, to wit, the 12th day of November, A. D. 1888, there was filed in said court and in said cause a certain other stipulation; and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Proof of Notice, etc.

United States Circuit Court, District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants. } No. 2244.

It is hereby agreed and admitted that the complainant has sufficiently proven notice to the defendant The Standard Mining Company of Kansas City, as charged in the bill of complaint, of the trusts and conditions, if any, on which the defendant I. W. Chatfield took complainant's deed on the 12th day of October, 1880, of all complainant's interest in the J. C. Johnston mine and premises, described in the complaint, and it is agreed that the complainant need take no more testimony on said question of notice; and the defendant The Standard Mining Company of Kansas City hereby waives and withdraws its denials of notice in this behalf,
654 contained in its answer in this cause, but does not waive or withdraw its denials that there was any such trust or condition as alleged in the complaint.

It is further agreed and admitted that the defendant The Standard Mining Company of Kansas City has no property or assets, excepting the J. C. Johnston and Chatfield mining claims described in the complaint.

It is further stipulated by both parties hereto that either may amend their pleadings to correspond with the proofs taken or to be taken, and with the stipulations of fact made in this cause, and that said pleadings shall be deemed and taken as amended accordingly for the purposes of the hearing and decree in this cause.

C. S. WILSON,
For Complainant.
CHAS. I. THOMPSON,
For Standard Min. Co.

(Endorsed:) No. 2244. In the circuit court. J. C. Johnston, plaintiff, *vs.* The Standard Mining Company of Kansas City, defendant. Stipulation as to certain proofs. Filed Nov. 12, 1888. William A. Willard, clerk. —— ——, complainant.

And afterwards and the same day, to wit, the 12th day of November, A. D. 1888, there was filed in said court and in said cause a certain other stipulation, and the said stipulation is in words and figures as follows, to wit:

Stipulation: Attached Testimony of Complainant Admitted in Evidence.

655 UNITED STATES OF AMERICA, } ss:
State of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants. } Cause No. 2244.

It is hereby stipulated that the attached testimony of complainant, J. C. Johnston, shall be read as a portion of his cross-examination upon his second deposition heretofore taken in rebuttal in this case, and the signing of said testimony is hereby waived.

And it is further stipulated as to any and all portions of the several depositions of said complainant which have not been signed that the signing of said testimony and depositions is also waived; and, further, that the signing of the deposition of witness John White is waived.

C. S. WILSON, *For Compl'nt.*
CHAS. I. THOMPSON,
For Def'ts.

Testimony of J. C. Johnston on Cross-Examination by Mr. Thompson.

Q. Where was the deed given by Crittenden and Adair to Acheson written?

A. I am of the impression that the deed was written in a room adjoining the one I was occupying at the Windsor hotel at Leadville.

Q. Are you positive that is so?

A. I am not positive. There was more or less writing done
656 there that day. I am not positive, but I think the deed was written in the sitting-room or parlor.

Q. Did you examine that deed after it was written?

A. Cannot say that I did. I saw the deed. Mr. Acheson showed me the deed.

(Endorsed:) No. 2244. U. S. circuit ct., district Colorado. J. C. Johnston, pl'ff, *vs.* The Standard M'ng Co. of Kansas C'y *et al.*, def'ts. Portion of cross-examination of compl't in rebuttal & stipulation. Filed Nov. 12, 1888. William A. Willard, clerk.

And afterwards and on, to wit, the 13th day of November, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Heard — Taken under Advisement.

JOHN C. JOHNSTON *vs.* THE STANDARD MINING COMPANY, ISAAC W. CHATFIELD, CHARLES I. THOMPSON, *et al.*	In Chancery. Bill for a Deed an- Accounting and for Other Relief.

At this day comes the said complainant, by C. S. Wilson, Esq., his solicitor, and the said defendants, by C. I. Thompson, Esq., their solicitor, also come.

657 And this cause coming on now for final hearing upon the bill of complaint, the answer thereto, the replication to said answer, and the proof taken herein, and the court, having heard the same, together with the arguments of counsel, doth take the same under advisement.

And afterwards and on, to wit, the 1st day of December, A. D. 1888, there was opened, published, and filed in said court and in said cause the depositions of Howard M. Holden and James E. Seaver on behalf of defendants; and the said depositions are in words and figures as follows, to wit:

Depositions Holden and Seaver Behalf Defendants.

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

Be it remembered that on this 16th day of June, 1888, I, Stewart Taylor, a notary public within and for the county of Jackson and State of Missouri, duly appointed, commissioned, and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the courts of the United States, cause to come before me, at my office, on the northwest corner of Fifth and Main streets, in the city of Kansas, in the county of Jackson and State of Missouri, and between the hours of 9 o'clock a. m. and 6 o'clock p. m. of said day, the following persons, to wit, How-

658 ard M. Holden and James E. Seaver, to be examined as witnesses in a cause depending in the circuit court of the United States in and for the — district of Colorado, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City and others are defendants.

And the said HOWARD M. HOLDEN, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Examination by Mr. THOMPSON:

Q. I will ask you, Mr. Holden, what is your name, age, and residence.

A. Howard M. Holden; 51 years old; residence, Kansas City, Missouri.

Q. What relation do you bear to the Standard Mining Company of Kansas City?

A. I am president of it.

Q. Are you acquainted with the J. C. Johnston Lode mining claim, in Roaring Fork mining district, Pitkin county, Colorado?

A. I am.

Q. How long have you been acquainted with it?

A. Since 1880 or 1881.

Q. Were you acquainted with the claim in the same mining district called the "Smuggler 2" at that time?

A. I was.

Q. How long had you been acquainted with it at that time?

A. From some date in September, 1880.

Q. How did you become acquainted with the claim?

A. I was in Aspen, Colorado, in September, 1880, looking after mining interests in which I was interested in that locality,
659 and while there met James E. Seaver and James C. Acheson, who were from Kansas City, Missouri, where I lived, and with whom I had been for some time acquainted, and they told me of the Smuggler 2 claim and asked me to visit it with them.

Q. Did you do so at that time, in September, 1880?

A. I did.

Q. Whom did you find in charge of the claim?

A. Mr. Acheson and Mr. Seaver.

Q. What were they doing upon the claim?

A. They were working it.

Q. Did they have a force of men at work upon the claim?

A. My recollection is that they had a number of men at work upon the claim at that time.

Q. In what manner were they working the claim?

A. My recollection is that they were running a tunnel.

Q. Do you recollect which tunnel that was, the upper or the lower one?

A. It was the main working tunnel, which is the lower tunnel.

Q. Now, Mr. Holden, I will ask you whether, after you visited that claim, you purchased any interest in it either for yourself or in behalf of any other person.

A. I did.

Q. In whose behalf?

A. In my own behalf.

Q. What interest did you purchase, Mr. Holden, at that time?

A. One-eighth.

Q. From whom?

A. The deed is by James E. Seaver.

Q. Have you that deed in your possession?

A. I have.

(The deed from James E. Seaver to William C. Oburn is here introduced in evidence and attached to this deposition, marked "Exhibit A," offered in evidence.)

660 (C. S. Wilson, attorney for plaintiff, objects to the introduction of said deed for the reason that it appears on its face to be a deed to William C. Oburn and not a deed to Howard M. Holden.)

Q. Now, Mr. Holden, this deed appears to be a deed to William C. Oburn and not a deed to yourself, and yet you say you made the purchase in your own behalf.

(Attorney for the plaintiff objects for the reason that any trust should be shown in writing.)

A. William C. Oburn is my brother-in-law, and we were interested together in various business matters. I do not now recall any particular reason that I had at that time, if any, for taking the deed in his name.

(Counsel for complainant objects to evidence which contradicts the face of the deed.)

A. But I paid the purchase price for this one-eighth interest from my own money, and the purchase was on my own behalf. I may have contemplated at the time letting Mr. Oburn into the transaction if he desired.

Q. Well, Mr. Holden, at that time what, if anything, had you heard about the J. C. Johnston claim?

(Objected to by Mr. Wilson as hearsay.)

A. Nothing whatever.

Q. When did you first hear of the J. C. Johnston claim?

A. Some months afterwards; I cannot locate the time exactly.

Q. I will ask you in what connection you first heard of the J. C. Johnston claim?

A. Some months after my purchase, as I have stated, of an interest in the Smuggler 2 some one came to me here in Kansas
661 City and told me that a patent was being applied for to the property embraced within the limits of the Smuggler 2 claim by the Fulton Mining Company as the J. C. Johnston claim, and that was the first that I ever heard of the J. C. Johnston claim.

Q. Now, Mr. Holden, upon obtaining that information, what did you do?

A. I conferred with other parties interested in the Smuggler 2, and we shortly afterward took steps to adverse the application for a patent by the Fulton Mining Co., and did file our adverse, and afterward brought suit in support of that adverse and also filed a bill in equity.

Q. In behalf of what claim did you adverse the application for a patent for the J. C. Johnston?

A. In behalf of the Smuggler 2.

Q. What court did you commence these proceedings in, Mr. Holden?

A. My recollection is that it was brought in the United States circuit court in the district of Colorado.

Q. Mr. Holden, after having commenced these actions, you may state what was done in reference to your claim in the Smuggler 2 lode with the claimant of the J. C. Johnston lode?

A. Myself and others who stood with me in defense of our interest in the Smuggler 2 took vigorous measures to defend our interests, employing counsel therefor and bringing the suits that I have already testified regarding —, and in the course of six months or thereabouts some advances were made mutually looking toward a settlement, the parties representing the J. C. Johnston trying to make such settlement by allowing interests in the Fulton mining stock representing a much less proportionate interest
662 in the total stock than the proportionate interest that we claimed in the mining property itself, which was embraced — the Smuggler 2 claim; and all such advances or propositions we persistently declined to consider, insisting that we would accept nothing less than a full recognition and concession of our interest in the property. We didn't care whether it came to us under the name of the J. C. Johnston claim or whether it remained with us under the name of the Smuggler 2 claim, so our interest in the property itself survived to us. Finally, the parties representing the J. C. Johnston conceded to us that interest in the stock of the Fulton Mining Co., which at that time was 100,000 shares, and we had issued to us 37,500 shares out of the 100,000 shares, being $\frac{3}{8}$ of the whole, our interest in the Smuggler 2 being in the aggregate a $\frac{3}{8}$ interest in that claim. So that it left us in the position regarding the property that we had been in from the beginning of the litigation as to the amount of our interest in the property. It was then agreed that, inasmuch as the patent to the property had been applied for by the Fulton Mining Co. under the name of the J. C. Johnston claim and the larger part of the expenses of procuring a patent had already been incurred by that company, that we would yield what we considered to be the rightful location—that is, the Smuggler 2—and take our interest in the J. C. Johnston through the Fulton Mining Co., which had applied for the patent, and we considered that there could be no legal or other objection to our doing this, inasmuch as all parties in interest, as we then understood, had come together and joined in the settlement. The Smuggler 2 claimants then dismissed their suits.

663 Q. Well, now, Mr. Holden, you say "all parties in interest," as you understand, had joined in the settlement. What parties do you refer to?

A. My recollection is that various parties who had formerly been interested in the Smuggler 2 had, independently of myself and others who were acting with me, made an adjustment satisfactory to themselves with the J. C. Johnston claimants, and that the parties who were acting with me in the litigation referred to were E. F. Brown, J. C. Acheson, O. H. Dean, and Mr. Oburn, whose interest was mine, and perhaps Mr. Seaver to some extent; I don't remember now just how he stood with reference to the business. I think he had some understanding with the J. C. Johnston claimants, though I don't recall just which side he stood the most on at that

time. Anyway, the total interest that stood out in opposition to the application for a patent aggregated a three-eighths claim to the property.

Q. I presume, Mr. Holden, you have no present knowledge of any settlement by Dr. Edward Dunscombe and Mr. Seaver?

A. I have not.

Q. I will ask you, Mr. Holden, what you know about any money being paid to Mr. Seaver subsequent to that time for his interest by the Fulton Mining Co.?

A. The sum of $2,500 was afterwards paid to Mr. Seaver in cash——

(By Mr. WILSON: We object to this as contrary to the allegations of the defendant's pleadings.)

A. —in liquidation of all claims of himself and his wife with respect to this property.

664 Cross-examination by Mr. WILSON:

Q. You say, Mr. Holden, that you met Mr. Seaver and Mr. Acheson in September, 1880?

A. Yes, sir.

Q. Where?

A. In Aspen, Colorado.

Q. At that time did you visit the premises?

A. I did.

Q. And at that time you purchased in the name of Mr. Oburn the one-eighth interest in the Smuggler No. 2?

A. I did not at that immediate time make the purchase. I visited the property with them and they offered me an interest—tried to sell to me—but I declined on the ground that I had all the money in mines that I wanted to put in or could spare; but a week or two or thereabouts afterwards I met Mr. Atcheson in Leadville, and he again solicited me to purchase an interest, and I did so at that time, and the deed was made and the money paid over. The transaction was concluded in Kansas City on the 8th of October, 1880.

Q. Was Mr. Acheson interested personally in this transaction and sale from Mr. Seaver to you?

A. I supposed him to be.

Q. Was he present when the deed was executed and the money paid?

A. My recollection is that he was. In fact, I know that he was. They were both present when I paid the money.

Q. Did you pay the money to them jointly or to Mr. Seaver?

A. I don't now remember which one of them took actual possession of the money. They were both present, and one or the other or both of them took the money and agreed to pay therefrom all indebtedness that was due to the workmen upon the Smuggler 2 mine. I took a written agreement from them to that effect.

Q. Then you had some conversation in regard to the debts of the mine with these parties?

665 A. Yes, sir; I recollect that I had.

Q. At that time was there anything said about the location of the J. C. Johnston mine?

A. There was not.

Q. Was there anything said about a deed which Mr. Acheson had procured from Messrs. Crittenden and Adair?

A. There was not; and I had never heard of the J. C. Johnston mine up to that time nor for some time afterwards.

Q. Did you examine or cause an examination to be made of the records of title in Pitkin county, Colorado, at the time or before you purchased your interest in the Smuggler No. 2?

A. I did have the records in Gunnison Co. examined.

Q. Did you examine the lode or the supposed lode in the Smuggler No. 2 and the surface ground located with the lode as a part of the Smuggler No. 2, with reference to any stakes or boundaries or notices on the ground at that time or before?

A. I don't think I made any critical examination of that sort, but I went all over the workings and formed an opinion as to the location of the property.

Q. Did you see any stakes or notices of any kind at or near the workings to indicate what claim the workings were upon?

A. I don't think I looked for anything of that kind. I don't remember now that I did.

Q. Did you know who Mr. J. C. Johnston was at the time you made your purchase?

A. I had never heard of Mr. J. C. Johnston. At that time I didn't know that there was such a person living.

Q. Do you now know where he was?

666 A. I might have noticed his name in some title to the Smuggler 2, but I had no acquaintance with him. I do not now know where he was at that time.

Q. State what conversation you had with Mr. Acheson and Mr. Seaver, or with either of them, with respect to the unpaid bills and debts incurred in locating and working the Smuggler No. 2 prior to the time you purchased?

A. My recollection is that it was but general on that point, and it was to the effect that there was some money—several hundred dollars—due to the workmen, and the definite understanding I had with Mr. Acheson and Mr. Seaver at the time I paid them the thousand dollars for an interest, in October, 1880, was that out of that money they should pay off every debt then owing against the mine.

Q. But do you not remember definitely just what those debts were and to whom they were owing?

A. I don't remember now whether they gave me any of the names of the workmen or not; very likely not, as the parties were unknown to me.

Q. You are quite sure that neither of them said anything about a debt owing to J. C. Johnston at that time for work on these premises?

A. I have no recollection of his name being mentioned. It might

have been mentioned along with other workmen as a person to whom money was owing for work on the mine.

Q. Now, I will ask you to state, Mr. Holden, if you can, just who were the actual parties that you represented or that represented this $\frac{3}{8}$ interest at the time the suits were brought in the United States court at Denver, Colorado.

667 A. Myself or Mr. Oburn, in whatever name it might have stood at the time, had a one-fourth interest and perhaps a little more than that. There had been several succeeding transactions with Mr. Acheson in the ownership of the Smuggler 2, so that our interest finally aggregated one-fourth, or perhaps a little more.

Q. Who held the other one-eighth?

A. Mr. E. F. Brown, who held, I think, $\frac{1}{16}$, Mr. O. H. Dean, who held, think, $\frac{1}{32}$, and there was another small interest held, just how I do not at this moment recall, but it all aggregated $\frac{3}{8}$ and I actively represented the whole of it.

Q. Did you have any interest in the Smuggler No. 2 in your own name?

A. I rather think not. I think that all my interest in that property was in the name of William C. Oburn up to the time of the compromise with the Fulton Mining Co., but I wouldn't swear positively about that without consulting the records.

Q. This paper signed by Messrs. Seaver and Acheson refers to the Kansas City lode claim as well as the Smuggler No. 2. Did you at the same time purchase an interest in the Kansas City lode claim?

A. Yes, sir.

Q. And where was that situated with reference to the Smuggler No. 2?

A. Right below it; down the hill.

Q. Were there any suits concerning the Kansas City location at or about the same time the other suits were commenced?

A. I think not; although I do not remember distinctly. We didn't regard the Kansas City of any material value. My recollection is clouded on that point.

Q. Is it not a fact that the Kansas City was afterwards located as the "Chatfield"?

A. I think so.

668 Q. And is it not a fact that the stock which you and your partners took in the Fulton Mining Co. covered not only the J. C. Johnston, but also the so-called Chatfield mine, formerly the Kansas City?

A. That is probably so, although I am not sure whether the Chatfield had been at that time conveyed to the Fulton or not.

Q. And is it not a fact that you and your partners, claimants of the Kansas City lode, brought an adverse suit and also a bill in equity similar to the two suits in the U. S. court in the State court in Pitkin county, Colorado, in which you adversed the application for a patent of the Chatfield lode, and also held that the locators and claimants of the Chatfield held a certain equitable interest of the locators and claimants of the Smuggler No. 2 and the Kansas City?

A. I can't answer that question from my personal recollection. I see from copies of certain papers that such suits were brought.

Q. And did you control those suits as well as the other suits in the U. S. court?

A. My impression is that I did as a part of the general scheme of defense against the action of the Fulton Mining Co. and parties interested in that company.

Q. And in your settlement with the Fulton Mining Co. did the stock which you and your partners received cover an interest in the Chatfield lode claim as well as in the Smuggler No. 2?

A. It did.

Q. Now, I will ask you, referring to the parties in these suits, who was Mr. M. C. Hollister and what interest did he have in these premises.

669 A. My recollection regarding this matter is this: that we were advised by our attorneys in Colorado that under the laws it was requisite that an owner of record should make oath to certain matters within the district in which the proceedings were being had, and as it was not then convenient or practicable for any of the parties holding record title to go to Colorado a deed was made to Mr. Holister, at the suggestion of our attorneys, Messrs. Taylor and Ashton, to an interest in the property so as to lay the foundation for him to act in the matter under the laws.

Q. Do you know who made that deed to Mr. Hollister?

A. I think it was made by Mr. Oburn.

Q. Is the deed in existence?

A. I presume so. I don't know that I have it in my possession, nor do I know where it is.

Q. Do you know whether it was recorded?

A. I don't. I presume that it was.

(The claimant calls for the production of the deed to H. C. Hollister mentioned by the witness.)

A. The deed was no doubt sent to Taylor and Ashton, and they probably have it.

Q. In one of these suits appears the name of Mame A. Underwood as a plaintiff. I will ask you whether you know Mame A. Underwood.

A. My understanding is that Mr. Acheson, in order to raise money to help conduct the litigation against the J. C. Johnston claimants, sold a small interest in the Smuggler 2 to Selby Jones and also to Mr. Underwood. Those interests were also represented, whatever they stood for, by him in the litigation.

Q. And when the stock was issued did Mr. Underwood get
670 any of the stock of the Fulton Mining Co.?

A. Yes, sir; I think it was issued in his name?

Q. Are you quite sure about that?

A. From further thought my impression is that it may have all been issued to me in such sized certificates as to number of shares as to show the interests of each party, and that the stock was then delivered by me to the different parties.

Q. Did you deliver any stock to Mr. Underwood or this person mentioned here as Mame A. Underwood?

A. I am quite certain that I did, though it may never have appeared in his name or hers; probably it didn't. I can trace that stock down to the present moment.

Q. I wish you would do so, if you can, during the day.

A. I can do it now.

Q. Well, do it now.

A. C. D. and A. R. French hold small interests in the Standard Mining Co. which, as I understand it, represent that Underwood interest.

Q. Where did they get that stock from?

A. Who?

Q. C. D. and A. R. French.

A. I understood they got it from Mr. Underwood, who became indebted to them.

Q. Did Mr. French or either of them get any of the stock at the time of your settlement with the Fulton Mining Co.?

A. I am very sure that Mr. Underwood did or some one who had the right to receive it.

Q. When did C. D. and A. R. French first get their stock? Did they get any stock in the Fulton Mining Co., or was it the Standard Mining Co. that they got their stock from?

671 A. They had stock in the Fulton Mining Co.

Q. And that stock you think was the Underwood stock?

A. I think so.

Q. And they got it as security on some debt?

A. That is my understanding; I couldn't swear to it from personal knowledge.

Q. But this French stock was issued in the first place in your name?

A. I will not swear to it; I think it was all issued in my name and by me delivered to the different parties who had the right to receive it.

Q. Was any of Mr. Seaver's stock issued in your name and afterwards delivered to him?

A. I think not. I think Mr. Seaver stood in an independent attitude, on an understanding that his interest was not involved in the litigation I was representing.

Q. Now, it appears, Mr. Holden, that one of these suits in the U. S. court was brought in the name of three parties plaintiff, namely, Mr. Ed. F. Brown, Mr. Oburn, and one of the Achesons—Elizabeth, I think—and that the other suit, the equity suit, was brought in the names of O. H. Dean and the two Achesons. How does it happen that those parties plaintiff in those two suits do not correspond? Why are they not the same parties if they owned the same property; do you know?

A. I do not recall the particular reason for the plaintiffs not being similar throughout. I suppose the adverse was intended to represent parties holding the interests of record, and the equity

672 suit was on behalf of all such parties, but for some reason, per-

haps, they were not all named. I couldn't without consideration or refreshing my memory answer that question more fully.

Q. I suppose you don't know why the defendants in the two suits were different parties, if they were different parties?

A. I suppose the defendants as named were the real defendants to the several actions; beyond that I couldn't answer without investigation or refreshing my memory.

Q. Do you know how long those suits were pending?

A. The compromise was made in April, 1882.

Q. And when were the suits brought?

A. I think the suits were brought in May or June, 1881; possibly July; it was along about that period.

Q. The records show that they were dismissed in December, 1882. How vigorously were those suits prosecuted?

A. They were prosecuted with the utmost diligence and vigor that was requisite and that we were capable of up to the time the further prosecution was rendered unnecessary by reason of the settlement.

Q. Is it not a fact, Mr. Holden, that those cases were simply brought, and that they lay there in court from April, 1881, to December, 1882, with nothing being done, so far as any court proceedings were concerned—any trials or any hearings of any kind that you know of?

A. I think you are stretching it at both ends. I find on examining the certified copies of the petitions that the suits were brought on the 7th of May, 1881, and a settlement was finally consummated on the 17th of April, 1882.

Q. When were the suits dismissed?

673 A. I don't know beyond your statement when they were dismissed. They were practically terminated on the 17th of April, 1882. It was agreed that they should be dismissed.

Q. I will ask you whether the same parties were interested and interested in the same way in the other two suits between the claimants of the Smuggler No. 2, the Kansas City, and the Chatfield lode claimants brought in the State court of Pitkin county, Colorado.

A. I think they were; I am quite sure they were.

Q. And you had charge and control of those two suits?

A. I would not say that I had absolute charge and control. I held the largest interest and was quite active in looking after them. I finally represented all the parties in conducting the litigation. Mr. Dean, Mr. Acheson, and perhaps Mr. Brown also took a somewhat active part.

Q. You represented the parties plaintiff in the final settlement in all of those cases?

A. Yes, sir.

Q. Were you aware of the fact that Mr. J. C. Johnston was a party defendant in one of those suits in the State court represented by Messrs. Thompson & Sayre?

A. I don't now remember anything about that.

Q. Now, you have stated to the best of your recollection who were the owners of the $\frac{3}{8}$ that you represented and took in the settlement.

I will ask you if you know who were the original owners and claimants of the other ⅜ in that property, the Smuggler No. 2.

A. I now know that Mr. Johnston and Mr. Seaver and Dr. Dunscombe or their wives were interested in that other portion of the property.

Q. You have given the names of Mr. Oburn and yourself as owning ¼ of the Smuggler No. 2. Which ¼ does that represent?

674 Under what purchase or purchases did you get that ¼?

A. Under the purchase of the ⅛ that I have already testified to and later purchases from Mr. Acheson.

Q. Please look at that deed and state whether that is the deed under which you claim the Acheson interest. (Hands witness deed.)

A. It appears to be a copy of an original deed which I have in my possession, representing a purchase from Mr. Acheson and his wife, in the name of Mr. Oburn, of a further interest in these properties subsequent to the purchase of the ⅛ which has already been testified to.

Q. Then, if you already had purchased ⅛ and your interest became ¼ afterwards, this deed here represents ⅛, I suppose?

A. I have stated that our interest was probably something more than the exact ¼. This deed does not indicate an exact portion of the property, but calls for all their right, title, and interest. I don't remember now just what that stood for at that time.

Q. Now, at the time you took this deed, Mr. Holden, did you know anything about the location of the J. C. Johnston claim?

A. I did.

Q. How long prior?

A. I should estimate from two to four months prior.

Q. As I understand it, after taking this deed you had something over one-fourth and something less than three-eighths, and the other interest was owned by Ed. F. Brown and Mame Underwood. Is that true?

A. Not entirely.

Q. Who else owned any?

675 A. I have already stated that, to the best of my recollection, Mr. Dean held an interest. It now occurs to me that probably Mr. Dean had no interest in the Smuggler 2, though I cannot state just what his interest in the property was and how he came by it. It was by virtue of some transaction between Mr. Acheson and himself; and I wish to recall any statements that I have made stating exactly who the other owners in the ⅜ interest were other than Brown, Oburn, and myself, but can state that all these interests, including Mr. Dean's, were finally merged in the settlement that was made by me with the Fulton Mining Co. people.

Q. Was Mr. Dean to get a part of that ⅜ of the stock?

A. My recollection is that he did, either direct from me or Mr. Acheson.

Q. Did Mr. Acheson get any of the stock?

A. I can't say as to that; he might have gotten a small portion.

Q. He had already conveyed everything?

A. Yes, sir; but it may have been there was an understanding that a small fractional part represented by that last conveyance was to go to him or to some one for him. I have a vague recollection of that sort, but don't know just how it was.

Q. Mr. Seaver and his wife neither came in for any part of that ¾ of the stock in the settlement?

A. No, sir; not so far as my knowledge extended.

Q. Now, had deeds been executed to these different parties owning and representing this ¾ interest in the Smuggler No. 2?

A. I don't know about that. I had nothing to do with the acquisition of interests held by Mr. Brown or parties other than Mr. Oburn and myself.

676 Q. Now, it was a part of the terms of the settlement, was it not, that you, or the parties whom you represented in the Smuggler No. 2, should receive ¾ of the stock of the Fulton Mining Co. upon the execution and delivery to the Fulton Mining Co. of deeds for their several interests; was that a part of the agreement?

A. I believe that it was.

Q. Were those deeds ever executed?

A. I think they were; my recollection is not positive on that subject.

Q. Do you remember anything about it?

A. I do not at this moment. I only know that we abandoned the litigation and the claims to the property under the Smuggler 2 name, and agreed to go ahead under the name of the J. C. Johnston claim with the Fulton Mining Co.

Q. When did you first become acquainted with Mr. Acheson?

A. So long ago that "memory runneth not to the contrary."

Q. When did you first have any conversation with him in regard to this mining property?

A. My recollection is that I knew nothing of it until I met Mr. Acheson and Mr. Seaver, in September, 1880.

Q. You talked with him quite fully about the property at that time, didn't you?

A. I spent in company with Mr. Kingsbury, who accompanied me around about Colorado, about the whole of an afternoon with Mr. Acheson and Mr. Seaver on and about the property. We looked it over pretty fully; they had a good deal to say regarding it, its desirability, &c.

Q. Do you know how Messrs. Thompson & Sayre acquired their stock in the Fulton Mining Company?

A. I do not.

677 Q. Do you know how it is that in all the conveyances to any parties of the Smuggler 2 title except this one of October, 1880, the J. C. Johnston claim was described and inserted along with the Smuggler No. 2?

A. I cannot swear that I know anything about any other deed of such a character than the last one that has been testified regarding from Acheson and wife the Oburn, in which the Smuggler 2 and the J. C. Johnston were both named. The reason why they

were both named in that deed is that prior to that time, as I have stated, it was discovered by me that a claim to the property had been set up under the name of the J. C. Johnston, and that Acheson had *a* received a deed from Crittenden and Adair, who were joint locators with Johnston, to the J. C. Johnston claim for their one-half interest in the property, and as the property was being claimed both under the Smuggler 2 name and the J. C. Johnston name both names were included in the deed.

Q. When did you first learn of the organization of the Fulton Mining Co.?

A. At the time, as I have stated in my direct examination, when I learned of the application for a patent being made; that, I think, was in December, 1880, or January, 1881.

Q. And you were informed of that in Kansas City by some one, were you?

A. Yes, sir.

Q. You think it was Mr. Brown?

A. I didn't say that; it might have been Mr. Brown, but it might have been Mr. Acheson; my recollection is that I learned of it through Mr. Crittenden, who was passing through the city and called and told them of it.

678 Q. Now, you stated that Mr. Seaver and Mr. Acheson guaranteed the payment of all bills an- debts owing by the Smuggler 2 out of the thousand dollars which you paid for the deed for the $\frac{1}{8}$. Do you know, as a matter of fact, whether they did pay those debts?

A. I do not, though I have an impression that I afterwards knew that they did not discharge all of them.

Q. You afterwards knew that they did not?

A. I have that impression. I wouldn't say positively. It is a good while ago.

Q. When the deed was executed from Mr. Acheson to Mr. Oburn, did that deed cover all of Acheson's interest except what he held for his partners, Dunscomb and Seaver? Was that the intention and understanding?

A. I think it was. There was a clause in that deed, which you doubtless observed, which refers to a trust under which he received the J. C. Johnston deed, which I understood to be for the benefit of himself and any others who were interested with him in the Smuggler 2.

Q. Then you understand that what he owned would be his original $\frac{1}{4}$ interest in the Smuggler No. 2, less what he had conveyed to Mr. Brown and afterwards to Mr. Underwood? Was that it? I am speaking now of the Smuggler No. 2.

A. Whatever interest he had. I don't remember now just how that stood or whether the parties you mentioned in your inquiry derived their interest by deeds direct from him or not.

Q. Do you know when Mr. Seaver got his stock in the Fulton Mining Co. and how much he got, he and his wife?

A. I don't of my own knowledge, except as I have gathered information from hearsay or noticing from the records.

679 Q. Was it prior to the time you got your stock, do you know?

A. I can't say as to that.

Q. Do you know what became of this stock? He hasn't any now.

A. I don't know.

Q. Do you know how much Dunscomb's stock was in the Fulton Mining Co.?

A. I can't answer that.

Q. Do you know what proportion he had of the original stock?

A. I can't tell you.

Q. Do you know how this issue of stock of the Fulton Mining Co. was issued? Do you know whether it came from unissued stock or from stockholders individually?

A. I do know all about that.

Q. State how that was.

A. At the time of that compromise the stock of the Fulton Mining Co. consisted of 100,000 shares, and of that number of shares 47,396 & ⅔ shares were unissued and in the treasury of the company. Out of that 47,396 & ⅔ shares the 37,500 shares were issued to me or to the parties interested with me in the Smuggler No. 2 in pursuance of this settlement we were making.

Q. Does the stock register of the Fulton Mining Co., which was commenced after this settlement, show the issue of stock in that way?

A. I think it does, although I have not seen that register for quite awhile. I can't say positively.

Q. Now, then, out of this 47,296 & ⅔ shares you got 37,500 shares, representing ⅜, which would leave 9,896 & ⅔. I will ask you what was done with that stock.

680 A. It was agreed that that might be distributed among the other parties as they might agree among themselves. I don't know just what was done with it. I understand it was so distributed among them; at least I made no claim against it when we got our ⅜ interest, which was what we claimed in the property.

Q. Out of the original issue of the stock before the settlement, the original issue being 100,000, do you know what proportion Mr. Chatfield got?

A. I don't.

Q. Do you know what proportion William J. Wilson got?

A. I don't.

Q. Do you know what proportion Thompson & Sayre got?

A. I don't.

Q. Do you know what proportion Dr. Dunscomb got?

A. I don't.

Q. Do you know whether or not these parties that I have named got the same *pro rata* share in this balance of 9,896 & ⅔ shares that they got in the first issue of stock?

A. I don't. I didn't care what became of it, so we got all we wanted, which we did get.

Q. You don't know what became of Mr. Seaver's stock?

A. I don't, from any personal knowledge of my own.
Q. How about Dr. Dunscomb's?
A. My recollection is that some years afterwards Mr. Chick and myself bought a portion of Dr. Dunscomb's shares; just the number of shares I don't now remember, but it was a portion of what he held. What became of the rest I don't know.

(The defendant, The Standard Mining Company, offers in evidence this deed, which is attached to this deposition, marked "Exhibit B.")

681 Redirect examination by Mr. THOMPSON:

Q. What is the meaning of these words: "Subject to the terms, conditions, and trusts upon which the conveyance to said J. C. Johnston lode was received"?

(Complainant objects to that question on the ground that the deed speaks for itself.)

A. It means that he received the deed from Crittenden and Adair, and while it was to himself individually, it was on behalf of himself and others who were interested in the Smuggler 2.
Q. Now, Mr. Holden, at the time the settlement was made by which 37,500 shares of stock were awarded to you what was done to replenish the treasury?
A. It was then agreed that the capital stock might be increased to 125,000 shares; the additional 25,000 to be held in the treasury for sale from time to time for the obtaining of money to work the property with.
Q. Was all that done?
A. It was.
[SEAL.] HOWARD M. HOLDEN.

682 EXHIBIT "A."

This indenture, made the eighth day of October in the year of our Lord one thousand eight hundred and eighty between James E. Seaver of the county of Jackson and State of Missouri, party of the first part, and William C. Oburn of the county of Jackson and State of Missouri, party of the second part; witnesseth,

That the said party of the first part, for and in consideration of the sum of one dollar and other valuable considerations in lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns, one undivided one-eighth interest in and to "Smuggler Two" lode or mining claim, and in "Kansas City" lode or mining claim, both located and being situate near Aspen, in Roaring Forks mining district in Gunnison county and State of Colorado. For a fuller description of

said property reference is hereby made to the location certificate thereof, recorded in the recorder's office in Gunnison county Colorado in Book 8 L at pages 102 & 113.

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, prop-
683 erty, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances:

To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES E. SEAVER. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF MISSOURI, } ss:
Jackson County, }

I, H. E. Marshall, notary public in and for said county, in the State aforesaid, do hereby certify that James E. Seaver, personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this eighth day of October, A. D. 1880.

[SEAL] H. E. MARSHALL,
Notary Public, Jackson County, Missouri.

684 (Endorsed:) No. 8957. Mining deed. James E. Seaver to William C. Oburn.

STATE OF COLORADO, } ss:
Gunnison County, }

I hereby certify that this instrument was filed for record in my office at 9 o'clock a. m. Oct. 19th, 1880, and is duly recorded in Book 15, L, page No. 314.

S. B. HARVEY, *Recorder.*

EXHIBIT "B."

This indenture, made the 21st day of April in the year of our Lord one thousand eight hundred and eighty-one between James C. Acheson and Elizabeth H. Acheson of the county of Jackson and State of Missouri, parties of the first part, and W. C. Oburn of the county of Jackson and State of Missouri, party of the second part, witnesseth,

That the said parties of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, & other valuable considerations to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns, all their right, title and interest in and to the following mining claims situate lying and being near the town of Aspen in Roaring Fork mining district Gunnison county Colorado,

The Smuggler Two lode vein deposit & mining claim and
The J. C. Johnson lode vein deposit and mining claim and
685 The Kansas City lode vein deposit and mining claim
More particularly described in the location certificates as recorded in the office of the recorder of Gunnison county Colorado
Smuggler Two recorded Book 8 L page 113
J. C. Johnson recorded Book 18 page 23
Kansas City recorded Book 8 L page 102

Subject to the terms conditions and trusts upon which the conveyance to said J. C. Johnson lode was received.

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—

JAMES C. ACHESON. [SEAL.]
ELIZABETH H. ACHESON. [SEAL.]

686 STATE OF MISSOURI, }
County of Jackson, } ss:

I, John A. Ross, a notary public in and for said county, in the State aforesaid, do hereby certify that James C. Acheson and Elizabeth H. Acheson, personally known to me to be the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Elizabeth H. Acheson, wife of the said James C. Acheson, having been by me examined separate and apart and out of hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her husband, and that she does not wish to retract the same.

My notarial commission will expire March 15, 1882.

Given under my hand and notarial seal this 22nd day of April, A. D. 1881.

[SEAL.] JOHN A. ROSS,
Notary Public.

(Endorsed:) No. 4529. Mining deed. James C. Acheson & Elizabeth H. Acheson to W. C. Oburn.

STATE OF COLORADO, }
County of Pitkin, } ss:

I hereby certify that this deed was filed for record at 9 o'clock a. m., Dec. 13th, 1882, in my office, and duly recorded in Book 13, page No. 240.

WM. B. ROOT, *Recorder.*

687 And the said JAMES E. SEAVER, of lawful age, being by me cautioned and sworn to testify the whole truth and carefully examined, deposeth and saith:

Examination — J. E. SEAVER by Mr. THOMPSON:

Q. What is your name, age, and residence?

A. James E. Seaver; I am 36 years of age; I reside in Salina, Kansas.

Q. Were you ever interested in the Smuggler 2 mining claim in Roaring Fork mining district, Pitkin county, Colorado?

A. I was.

Q. When were you so interested, Mr. Seaver?

A. I gained my interest individually from my wife, who was one of the original locators; I have forgotten the date.

Q. Who were her colocators?

A. J. C. Johnson and Margaret Dunscomb.

Q. Did you have any kind of an agreement concerning the location of that among other claims?

A. Yes, sir; we bought the interest in all the claims which he had located there in Roaring Fork district, among which was the Smuggler 2.

Q. Was the Smuggler 2 known by that name at that time?

A. It was.

Q. Who were the partners to that "grub-stake" contract?

A. J. C. Johnston, A. L. Rouze, E. Dunscomb, James E. Seaver, and J. C. Acheson.

(By Mr. WILSON: We object, unless the loss of the contract is shown.)

Q. I will ask you, Mr. Seaver, whether M-. Rouze continued to work with you under this contract?

A. He did not.

Q. Was there any change, then, made between Mr. Johnston and the other parties to it?

A. Mr. Rouze simply stepped out.

688 Q. Who succeeded to his share?

A. Mr. Acheson, Dr. Dunscomb, and myself.

Q. Now, Mr. Seaver, when did you first see the Smuggler 2 mining claim?

A. I think it was in May, 1880.

Q. What, if anything, had you furnished to Mr. Johnston before that time?

A. We had furnished him money and goods and supplies to go over into that country and prosecute and work these claims until we could get there.

Q. Do you remember what amount you furnished?

A. All that he wanted at the time.

Q. At what time was that?

A. Previous to the time he went there. I think the time he left Buena Vista was in March or April.

Q. You went over in May?

A. Yes, sir; to the best of my recollection.

Q. How long did you remain there at that time?

A. I think until the last of June.

Q. Did you go upon the Smuggler 2 claim?

A. I did.

Q. I will ask you whether the claim had been located prior to that time.

A. I think it had.

Q. What did Mr. Johnston say to you about discovering mineral on the claim?

A. He said that he had.

Q. Who went there with you?

A. I went alone—that is, I met two strangers on the trail.

Q. What, if anything, did his representations that he had discovered mineral on the place have to do with your paying out money?

A. It had everything to do with it. It was on his representation that we furnished money and supplies.

Q. Had he made that representation before you furnished money and supplies?

A. Yes, sir.

689 Q. Where did he say he had discovered this mineral on the claim?

A. He claimed first that he had discovered the mineral in the discovery shaft.

Q. Where was the work being done on the claim when you first went over there—I mean what was the nature of the work?

A. They were running the tunnel.

Q. They were not working on the shaft, then?

A. No, sir; not to my recollection.

Q. How long had you been there before Edward Dunscomb came over there?

A. A few weeks. I don't remember the exact time.

Q. Who worked on the claim while you were there?

A. Mr. Johnston worked on the claim. We had quite a good many men working on it, and I worked myself.

Q. Did Dunscomb work on it?

A. He did some. He came over every day.

Q. Now, will you state, Mr. Seaver, whether or not the vein was cut in that tunnel while you were there?

A. Yes, sir; I think it was.

Q. About what time was that struck?

A. I don't remember exactly; some time in June.

Q. Do you remember about the date in June that you left?

A. I think about the 28th.

Q. How long before you left, approximately, did you cut the vein?

A. I don't remember exactly?

Q. Were you working in the tunnel at the time?

A. I was superintending it.

Q. What caused you to leave?

A. I was taken sick with mountain fever.

Q. Where did you go?

A. I went to Buena Vista.

Q. Who went with you?

A. Dr. Dunscomb and one of our men and Mr. Johnston went part of the way.

690 Q. How many animals did you take with you?

A. Five or six; I don't remember exactly.

Q. What was the matter with you?

A. Mountain fever.

Q. Now, what was done while you was there in regard to paying the men and paying Mr. Johnston and furnishing supplies under that grub-stake contract?

A. Everything was paid up to the time that I left. I don't remember that Mr. Johnston had anything coming to him at that time.

Q. How long did you remain sick?

A. I was very sick for a month.

Q. What, if anything, do you know of supplies having been sent over to him after you left there, or money or anything of that kind?

A. Dunscomb, I think, sent supplies back with the men that we brought.

Q. Back to Aspen?

A. Yes, sir.

Q. When did you return to Aspen?

A. In September, I think.

Q. Do you remember what time in September?

A. About the middle of September, I think.

Q. Did you ever see Mr. Johnston after you left in June, 1880?

A. I did not.

Q. Who was on the claim when you went there in September, 1880?

A. Mr. Acheson had a number of men there working.

Q. Do you remember how many men were working there?

A. Five or six, anyway.

Q. What, if anything, do you know about the J. C. Johnston claim at that time?

A. I had heard previous to that that the mine had been jumped by Mr. Johnston, Mr. Crittenden, and Mr. Adair, and notified Mr. Acheson. He went over to Aspen and followed them to
691 Leadville, and he notified me from Leadville that he had seen these parties, and they had agreed to deed the property back to him on the payment to them of the expenses they had been to on the property up to that time, which I think was something over $500.

(Objected to by Mr. Wilson on the ground that it is hearsay—a statement of Mr. Acheson to Mr. Seaver.)

Q. How long did you and Mr. Acheson work on that claim after you went there in September and what did you do on it?

A. We prosecuted the work on it, and I stayed there after Mr. Acheson left a few weeks.

Q. Do you know of any winze or shafts being sunk?

A. Yes, sir.

Q. Who sunk that winze or shaft?

A. I think it was under our direction.

Q. Was that after you went back the second time, in September, or before you left?

A. I think that was partially done before I got there in September.

Q. Did you work on it after you went back?

A. We did.

Q. How deep down did you sink it?

A. To the best of my recollection, about 30 feet.

Q. Did you ever examine that discovery shaft or the shaft that Mr. Johnston told you he had struck mineral in?

A. Yes, sir.
Q. Do you have any present recollection of examining it?
A. I can't say that I do now, how, when, or where.
Q. You relied on his word that he had found mineral?
A. Yes, sir; we considered that he was an expert and that we were novices, and we relied on him entirely.
Q. State whether before you left in June you purchased any supplies in Aspen?
A. We did.
692 Q. From whom did you purchase?
A. I don't remember the parties' names.
Q. State whether or not you paid for what you purchased.
A. I think we did pay for everything.
Q. Do you remember Crittenden or Adair?
A. I remember Crittenden.
Q. What was Crittenden doing?
A. He was considered a kind of mining speculator, and I don't know what other business. I never had any business with him as I know of.

Cross-examination by Mr. WILSON:

Q. Now, Mr. Seaver, you went to Aspen first in the month of May, 1880?
A. I think it was in May.
Q. And you remained there continuously until you were taken ill and went away?
A. I did.
Q. How much of that time did you work upon the Smuggler No. 2?
A. I think I was on the mine every day that I could be.
Q. Had you ever had anything to do with mining prior to that time?
A. No, sir.
Q. That was your first experience?
A. It was.
Q. When you went there did you go in company with Mr. Johnston?
A. Mr. Johnston went first; I went later.
Q. And you found him there at work, did you?
A. Yes, sir.
Q. Was it before you got there or after you went there that he told you that he had discovered mineral in place?
A. It was before.
Q. When you got there you examined for yourself, did you?
A. I suppose we did.
693 Q. And you went to work?
A. Yes, sir.
Q. How many men were employed in working the mine while you were there?
A. I don't remember exactly; eight or ten men at times.

Q. As many as that working together at times on this one property?

A. I think so.

Q. What were you doing with the other property mentioned in this agreement, namely, the "Little Pearl," "Badger Boy," "Tiptop," "John G. Lilly," "Long Johnston," "Detective," and eleven more not named, but located claims, and partially described in a sketch of the camp made by the party of the first part—that is, Johnston and Rouze—and given by them to the parties of the second part?

A. Some of them we did work on; some of them we never did anything on, we let them drop.

Q. On which of the claims did you work, if you remember?

A. I don't remember.

Q. Now, the name of the Smuggler 2 does not appear here; was it located before under a different name, if you know?

A. I think not; I may be mistaken.

Q. Do you think it was a new location?

A. I think it was located before we went over there.

Q. But you think it is among the described claims in this paper?

A. I have not looked at that paper.

Q. I have given you the names.

A. I don't know why it is not there; it must have been among this other eleven not mentioned.

Q. When did he tell you that he had discovered mineral in the Smuggler No. 2; and, if so, did he call it "Smuggler No. 2," or some other name?

A. He called it Smuggler No. 2, I think.

694 Q. When did you discover that his statement that he had discovered mineral in place on the claim Smuggler No. 2 was untrue?

A. I don't know as I ever made the discovery.

Q. Did you state that in your examination by Mr. Thompson, in answer to Mr. Thompson's question?

A. I did not.

Q. Then you do not mean to be understood as stating that he falsely represented to you that he had discovered mineral *the* place in the Smuggler No. 2 claim?

A. I mean to be understood that we had mineral there on his representations.

Q. Now, Mr. Seaver, this contract provides on your side as follows. "That parties of the second part hereby agree to pay said Johnston and Rouze, parties of the first part, on trading for the Roaring Fork mining district, $275, and pay for their outfit and one month's advanced wages; to pay them $37.50 each per month for expenses, and to pay for all work to be done on claims in pushing developments, and when deemed best in working assessments," &c. Now, I will ask you whether when Mr. Rouze dropped out of the contract the money that you were to pay Johnston and Rouze, namely, $37.50 per month each for expenses, was by agreement to be paid all to Johnston, $75.

A. I don't remember positively.

Q. Do you remember just how this agreement was adjusted when Mr. Rouze dropped out of it?

A. I think Mr. Rouze merely dropped out of his share of the contract.

Q. And what was to be done with Mr. Rouze's share in the contract? Was it to go to Johnston, or to you and your partners?

A. I think Mr. Rouze merely stepped out of the contract, and Mr. Johnston was to have his share in the original contract.

695 Q. And you are not certain whether Johnston was to receive this $37.50 that Rouze was to receive under the contract?

A. I am not positive.

Q. To the best of your recollection, was it not understood that Johnston was to receive $75 per month in place of Johnston and Rouze, who were to receive together $75 per month under the contract?

A. I don't remember.

(It is agreed by the parties that when Rouze stepped out of the grub-stake contract Johnston was to receive $75 per month, being Rouze's wages added to his own, and the other parties to the contract were to receive Rouze's share in the locations made under it in addition to their own, making one-fourth for Johnston and three-fourths for Dunscomb, Seaver, and Acheson.)

Q. Now, then, I will ask you whether you and your partners paid Mr. Johnston $75 a month under this contract or under any contract, or paid him any amount of money after the time that he went up there and went to work.

A. We did.

Q. How much did you pay him?

A. I don't remember exactly.

Q. You don't mean to say you paid him $75 a month?

A. At the time we made the contract and he started out we paid him everything that we considered due under the contract.

Q. This contract calls for $75 in cash and the outfit and one month's wages in advance. Did you pay him that?

A. I think we did.

Q. Are you sure of it?

A. I couldn't swear to it, but I know we bought the outfit and paid for it, and we gave Mr. Johnston money, and he went off satisfied.

Q. After you got there did you give Johnston money at any time?

A. Yes, sir; some.

696 Q. How many times?

A. I don't know.

Q. Did you give him any money when you left and went out?

A. I don't remember; I think we did; I think we left money with him.

Q. Do you remember that you did?

A. I don't.

Q. Did you pay off the men when you went out?
A. To the best of my recollection the men were all paid.
Q. You are not sure about that?
A. I wouldn't swear to it.
Q. Now, who had authority to contract bills for supplies and for working the mines?
A. Mr. Johnston did and I did and Mr. Acheson and Mr. Dunscomb did; we all bought supplies.
Q. Were there any bills for supplies, wages, or otherwise for the working of the mine that Johnston had contracted at the time that you went out sick that were unpaid?
A. I don't remember that there were.
Q. Are you certain that there were not?
A. I can't answer that.
Q. Now, you did state that at the time you heard from Acheson at Leadville that he had arranged with Crittenden and Adair to pay them the money that they were out, that there was owing for wages, &c., something over $500; that you stated?
A. Yes, sir.
Q. When were those bills contracted, if you know?
A. After we left.
Q. When you left in June—28th, I believe you said—how long were you gone?
A. I got back in September some time; I don't remember the exact date.
Q. Did Dr. Dunscomb go out with you?
A. He did.
Q. Do you know when he got back?
A. I don't.
Q. Was he there when you returned in September?
A. He was not.
697 Q. Where did you and he go to?
A. We went to Buena Vista.
Q. And you were there until you returned in September?
A. No, sir; I was in Buena Vista for several weeks and then went to Maysville and remained there.
Q. And while you were in Buena Vista where was Dunscomb?
A. He was there part of the time.
Q. Was he there until you left for Maysville?
A. I think he was; I wouldn't be positive of that.
Q. Do you know anything about Acheson's movements from the time that you left Aspen to the time that you returned?
A. He went to Aspen and found that Crittenden and Adair had left there; he went to Leadville and found them there.
Q. When was it he went there?
A. It was in July, I think.
Q. Was Acheson in Aspen when you left?
A. No, sir; he was not.
Q. How long prior to that time did he leave?
A. I don't think he was ever there.
Q. You don't think he was there at all?

A. I don't remember.

Q. You and Dr. Dunscomb were looking after matters in Aspen so far as you were concerned?

A. Yes, sir.

Q. Didn't Acheson hold a joint power of attorney from you and Dunscomb for you and in your names to sell claims, &c.?

A. He did.

Q. He was not there to give his attention to the matter?

A. We were there to oversee the work, and Mr. Acheson was in Maysville and Kansas City on other work.

Q. He was looking after sales?

A. He was to a certain extent, I suppose.

Q. Did he negotiate this sale to Mr. Holden for Mr. Oburn of one-eighth of the Smuggler No. 2?

698 A. I don't know whether he negotiated the sale or not; what his talk with Mr. Holden had been before I don't know.

Q. When did you first hear of this relocation or attempt at relocation of the Smuggler No. 2 as the J. C. Johnston mine?

A. I think it must have been in July, when I was in Maysville; the last of July.

Q. And you learned that from Mr. Acheson?

A. No, sir; I think the information came from Dr. Dunscomb, at Buena Vista.

Q. When you negotiated your sale to Mr. Holden and Mr. Oburn did you communicate to him or to either of them anything about the J. C. Johnston location covering the Smuggler No. 2?

A. Mr. Acheson knew all about it.

Q. You were present, were you not?

A. With Mr. Holden?

Q. Yes, sir.

A. I don't remember; I didn't consider that the J. C. Johnston cut any figure in the transaction.

Q. Did Mr. Acheson say anything about it in your presence?

A. Not that I know of.

Q. You talked the matter over with Mr. Acheson to some extent, did you not?

A. I suppose we did, of course.

Q. Did you pay a part of the money which Mr. Acheson paid to Crittenden and Adair for their deed for the one-half interest in the J. C. Johnston mine?

A. Mr. Acheson sold an interest in a piece of property at Leadville—two pieces of property—in which himself and myself were interested to raise the money.

Q. To raise that $500?

A. Yes, sir.

699 Q. How about Dr. Dunscomb; did he pay any part of it?

A. I don't think he did.

Q. Now, when Mr. Acheson took that deed from Crittenden and Adair was he acting for Dunscomb as well as for you and himself?

A. I suppose he was acting for all of us.

Q. And were you or were you not equally interested; you three?

A. I think we were.

Q. You owned or claimed the same proportion in that title?

A. We had the same original proportion; I don't know whether any of the others had deeded any of their interest away or not.

Q. You deeded nothing of yours except a small interest to Ed. Brown?

A. That is all.

Q. At the time you made your conveyance to Mr. Oburn of that one-eighth in October, 1880, how much of an interest did you own or claim in the Smuggler No. 2?

A. I considered that I had a one-fourth interest, less my percentage of the sale to Mr. Holden.

Q. Less what you were then selling Mr. Holden or Mr. Oburn; I am not asking you about that.

A. Less my one-third of that.

Q. Then, this one-eighth that was sold to Mr. Oburn didn't come all out of your interest?

A. No, sir; it was understood we were all three interested in the sale.

Q. Although the deed was signed by you?

A. Yes, sir.

Q. And was the purchase price divided equally between you and Mr. Acheson and Dr. Dunscomb as to that one-eighth?

A. I drew the money; Mr. Acheson and myself went to Colorado together; I went as far as Salida and turned the money over to Acheson, less our expenses; I don't remember what they were. I went to Maysville, where my wife was, and Mr. Acheson went over
700 to Aspen with the balance of this money to pay the debts on the mine and to prosecute the work and to finish it for the winter.

Q. And did you pay off the debts?

A. I don't know. Mr. Acheson was to do that.

Q. Did he pay them off?

A. I don't know whether he did or not.

Q. Now, prior to that time—in June or July, I think it was—it appears that a deed was made to Ed. Brown of $\frac{1}{2}$ of $\frac{3}{4}$ of the Smuggler No. 2 for a stated consideration of $1,200. Do you remember that deed? Look at that copy and see if you remember that conveyance. (Hands witness paper.)

A. I know there was such a deed made through Mr. Acheson.

Q. Through Mr. Acheson?

A. Yes, sir; he had a power of attorney.

Q. To raise money on the property?

A. To get money to prosecute the work on the property.

Q. This deed states a consideration of $7,500. I will ask you what the actual consideration was, if you remember.

A. I don't remember.

Q. Was it as much as $7,500?

A. I think not.

Q. Was it as much as $1,000?

A. I don't remember what the consideration was.

Q. Do you remember what was done with the proceeds of that sale?

A. I don't.

Q. Did you get any part of it?

A. No, sir. The money, to the best of my knowledge and belief, was spent on the property through Dr. Dunscomb and Mr. Acheson.

Q. How many men were working on the property when you left in June, as near as you can remember?

A. I think there were eight or ten men working there, though I don't remember exactly.

Q. Were there any men at that time working on any of the other properties?

A. I think not.

701 Q. What was your intention as to returning when you left in June?

A. I intended to return as soon as I got well.

Q. And did you return as soon as you were well?

A. Yes, sir.

Q. You were sick, then, from the time you left until September?

A. I think I was sick about all the time.

Q. Were you under Dr. Dunscomb's treatment?

A. I was up to the time I left Buena Vista.

Q. Now, you say you think the vein was cut before you left. Can you not be more positive about the matter?

A. No; I cannot.

Q. When was it Dr. Dunscomb came to Aspen while you were there?

A. It was a short time after I got there; I don't remember just how long.

Q. He went with you?

A. No, sir; he came in after I did. I went over alone first and he came afterwards with the pack train.

Q. He went out with you when you were sick?

A. Yes, sir.

Q. Were the animals brought back, do you know?

A. Some of them were.

Q. What supplies, to your knowledge, were sent back to Johnston after you and Dunscomb left in June?

A. To my knowledge I don't know of any. Dunscomb reported he sent back all the animals.

Q. How about money—wages to pay the men? Was there anything sent in to Johnston?

A. I don't know; I was too sick to pay any attention to it. They certainly sent back supplies with the pack train when they went back.

Q. You don't know how much supplies?

A. I don't.

Q. You don't know anything about what occurred there at Leadville between Acheson and Crittenden and Adair and Johnston except what Mr. Acheson told you?

A. That is all.

702 Q. I think the $1,000 or whatever it was—$500, I believe you stated—was paid by Mr. Acheson out of the proceeds of certain sales that he had made at Leadville?

A. Yes, sir.

Q. Was that property in which you and he were jointly interested?

A. Yes, sir.

Q. How was Dunscomb's part to be paid, then, if you know?

A. We had to have the money at that time. We didn't have time to see Dunscomb and collect it.

Q. You paid it for him?

A. We paid it for him.

Q. Did Dr. Dunscomb pay it back?

A. We had a general accounting between us and I supposed it was balanced up afterwards. I don't remember how we made the settlement with him or if we made any settlement.

Q. When did you first hear of the organization of the Fulton Mining Company?

A. From Mr. Crittenden when I was in Kansas City. I think it was in December.

Q. When did you get your stock from the Fulton Mining Co.?

A. I think that was in January, 1881.

Q. How much stock did you get?

A. I think 6,500 shares. It might have been a few shares more.

Q. And what was that stock issued for?

A. As a part payment of my interest in the property.

Q. Did you have anything to do with the bringing of those suits in the spring of 1881?

A. I did not.

Q. If your name was used as a party to those suits or any of them was it used with or without your knowledge or consent?

A. I never authorized any suit against the company.

703 Q. Did you get any part of that $\frac{3}{8}$ of the stock that was issued to Mr. Holden and the parties that he represented?

A. I did not.

Q. Now, state the circumstances fully under which you afterwards received any money or any consideration for your interest in the Smuggler No. 2 and the J. C. Johnston.

A. Subsequent to this issue of stock?

Q. Yes, sir.

A. I sold my equity in the J. C. Johnston and Smuggler 2 lode to F. N. Chick for $2,500.

Q. What do you mean by your "equity" in that property?

A. I considered that as the balance due me on the interest that I still owned in the Smuggler No. 2.

Q. How long had that matter been running at the time that you executed this deed to Mr. Chick?

A. It had been running about six years.

Q. Had you ever taken any steps to enforce any claim against the Fulton Mining Co. or any one for your interest in the Smuggler No. 2. or in the J. C. Johnston during that time?

A. I never had the means to enforce the claim.
Q. What business had you been in during that time?
A. The grain business and the milling business.
Q. In Kansas?
A. In Kansas City part of the time and part of the time in Kansas.
Q. When you consummated this business—executed this deed and received $2,500—did Mr. Chick go or send to you or did you go to him about the matter?
A. I went to Mr. Chick.
Q. Whereabouts?
A. Here in Kansas City.
Q. How did you happen to do that; what started you?
A. I had received a letter from Mr. Johnston.
704 Q. Mr. Vincent Johnston?
A. I don't remember his initials.
Q. Not Mr. J. C. Johnston?
A. No, sir; he wanted to know what I would take for my interest.
Q. What you would take for your interest in what?
A. In the Smuggler No. 2.
Q. Was anything said about the J. C. Johnston?
A. I don't remember whether he mentioned the J. C. Johnston or not; he might have done so. I thought from that I might possibly get something out of it, and I came to Kansas City and interviewed Mr. J. S. Chick.
Q. Did Mr. Vincent Johnston make you any propositions or offers?
A. Yes, sir.
Q. What proposition did he make you?
A. He made me a cash proposition of $1,000 and one-half interest in the claim that he succeeded in establishing.
Q. Did he state to you that he proposed to bring a suit or endeavor to establish a claim against the property?
A. He did.
Q. Did he state to you that it was on account of an interest which you had in the J. C. Johnston claim by virtue of a deed from Mr. Acheson to you for $\frac{5}{32}$?
A. I think he mentioned that deed in our talk together concerning the property.
Q. I want to ask you before I forget it: What was the purpose of that deed from Mr. Acheson to you, made, I think, in January, 1881, conveying to you $\frac{5}{32}$ in the J. C. Johnston claim?
A. To protect myself in case the J. C. Johnston locators won their case.
Q. And was this $\frac{5}{32}$ interest which you got by that deed what you sold and deeded to Mr. Chick?
705 A. I never considered the J. C. Johnston lode as the proper location, and considered if I had an equity it was through the Smuggler 2 location.
Q. Please answer that question: whether Mr. Chick was buying

that $\frac{5}{32}$ from the J. C. Johnston to hedge off the danger of a lawsuit and claim on account of that interest.

A. I don't know what he was buying it for. I know my talk with him was entirely about my equity in the Smuggler No. 2 lode.

Q. Was anything said about an equity in the J. C. Johnston lode?

A. I don't remember that there was.

Q. What did Mr. Chick state, as near as you remember?

A. I can't remember anything definitely. I did most of the talking.

Q. You knew that other parties had approached you with offers and you thought you could get more from Mr. Chick?

A. Yes, sir; that was the intention.

Q. What became of your stock in the Fulton Mining Co., Mr. Seaver?

A. I turned some of it over to Mrs. Underwood—I think I turned 375 shares over to Mrs. Underwood and 375 shares to Selby Jones, and 6,000 shares I sold to J. S. Chick, of the Bank of Kansas City.

Q. That covered all the stock you got?

A. Yes, sir; I had a few shares left which were stolen from me or lost.

Q. 6,000 shares you sold to whom?

A. J. S. Chick.

Q. When was it you transferred the stock to them, if you remember?

A. I think it was in 1884; I don't remember the exact date.

Q. I want to ask you, Mr. Seaver, whether you have had any conversation with Mr. Holden or Mr. Thompson or any one in their behalf as to your testimony in your case.

706 A. I met Mr. Holden and Mr. Thompson, and they both told me to be here at 10 o'clock and tell what I knew about this matter, and I told them I would tell the truth, the whole truth, and nothing but the truth.

Q. Was that the extent of your interview?

A. Yes, sir.

Q. It is a mere accident that you happened to be in Kansas City at this time, so far as this case is concerned?

A. No, sir.

Q. How did it happen?

A. Mr. Holden was in Salina a few weeks ago, and we had a talk in regard to the property, and he asked me some questions in regard to it, what I knew about it, and he told me that they would probably want to take my deposition in the case; that parties had brought suit, and he wanted to know when I would be over. I didn't know then. He telegraphed me last week. He wanted me to set a day, which I couldn't do. Yesterday he telegraphed me and wanted to know whether I could possibly be here to-day; if not, next week.

Q. And you answered that you would be here?

A. I answered that I could come to-day and couldn't next week.

Q. Did he offer you any inducement of any kind to testify?

A. Nothing at all except my expenses. He said he would pay my expenses if I would come here.

Redirect examination by Mr. THOMPSON:

Q. When that stock was issued to you, about January, 1881, was that issued in full payment of your claim?

A. No, sir; I did not consider it so.

Q. What was this $2,500 for?

A. That was the balance of my claim under that settlement.

707 Recross-examination by Mr. WILSON:

Q. On what basis of calculation was that amount of stock issued to you at that time? In the first place, I think I can tell you exactly the amount of stock that you got. I will ask you if this is the stock that you and your wife received at that time or about that time: "James E. Seaver, 376 shares, April 9, 1881; James E. Seaver, 376 shares, April 9, 1881; James E. Seaver, 18 shares, April 9, 1881; Bell R. Seaver, April 9, 1881, 6,000 shares." That is correct, is it?

A. Yes, sir. That represented one-half of the amount that was due to me after paying my share of the expenses.

Q. One-half of what was due you on your interest?

A. Yes, sir.

Q. And the other half was to be issued to you subsequently?

A. Yes, sir. It had not been issued at that time.

Q. And did you ever make application to the Fulton Mining Co. for the issue of the other half?

A. I never made any legal application.

Q. Why didn't you do that? Didn't you care enough about it?

A. I knew they had issued the balance of the stock to these other parties and considered I would have to have a big lawsuit to get it, and I never considered that I had the means to prosecute it.

Q. You never even demanded of the company to issue it?

A. No, sir.

Q. How did it come about that they issued to you the stock at the time they did, on your demand?

A. I went to Leadville, I think, in January, 1881, and saw Dr. Dunscomb, and he told me that the company had reserved that amount of stock for my share in the property, and I went to their office and they issued the stock.

708 Q. Did you have any talk with Dunscomb as to the amount of stock he received?

A. I think I did, and I don't think he told me.

Q. Do you know as a matter of fact that he took one-third of the stock, or very nearly?

A. I don't know anything about it.

Q. Do you know anything about this transaction: that after Crittenden and Adair had made a deed of a one-half interest to Mr. Heson, one-half interest in the J. C. Johnston, that second deed

was made from Crittenden and Adair to the Fulton Mining Company? Did you ever hear anything about that?

A. I heard about it when I heard that the Fulton Mining Co. had made application for a patent on the property; I saw it on the abstract of title Crittenden exhibited to me.

[NOTARIAL SEAL.] JAMES E. SEAVER.

EXHIBIT "C."

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

In the Circuit Court of the United States in and for said District of Colorado.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY and Others, Defendants.

It is hereby stipulated and agreed by and between the above-named complainant and the above-named defendant, The Standard Mining Company of Kansas City, by their respective solic-
709 itors, that the depositions of witnesses to be read in evidence on behalf of the said The Standard Mining Company of Kansas City at the final hearing of said cause may be taken as follows, to wit, on Saturday, the 16th day of June, A. D. 1888, at the law office of Warner, Dean & Hagerman, on the northwest corner of 5th and Main streets, in Kansas City, Missouri, before Stewart Taylor, a notary public.

The witnesses there to be examined are Oliver H. Dean, Howard M. Holden, and James E. Seaver, and their depositions shall be taken between the hours of 10 o'clock a. m. and 6 o'clock p. m. of said day. The taking thereof shall, if necessary, be continued from day to day thereafter, at the same place and between the same hours, until the same shall be completed.

And the giving of notice of the taking of such depositions and the formalities incident thereto are hereby waived, and said depositions when so taken and filed in the office of the clerk of said court may be read in evidence at the hearing of said cause by said The Standard Mining Company of Kansas City in the same manner and with the same effect as if notice of such taking had been duly and regularly given.

Dated June 11, 1888.

C. S. WILSON,
Attorney for Complainant.
CHARLES I. THOMPSON,
Attorney for Defendant.

710 UNITED STATES OF AMERICA, *District of Colorado*, } ss:

I, Stewart Taylor, a notary public within and for the county of Jackson and State of Missouri, duly commissioned, qualified, and

acting as such, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in circuit and district courts of the United States, do hereby certify that the witnesses whose depositions are above set forth are material and necessary to the proper determination of the said cause in the caption set forth and described, and that the said witness, Howard M. Holden, is a resident of the city of Kansas, in the county of Jackson and State of Missouri, the same being at a greater distance than one hundred miles from the city of Denver, State of Colorado; and that the said witness, James E. Seaver, is a resident of the city of Salina, in the county of Saline and State of Kansas, the same being at a greater distance than one hundred miles from the city of Denver, in the State of Colorado. I further certify that a notice of the time and place of the taking of said depositions and the names of the witnesses to be examined, signed by C. S. Wilson and Chas. J. Thompson, att'ys for complainant and defendant, which said stipulation is returned herewith, marked Exhibit "C;" and I further certify that I was attended at my office, on the northwest corner of Fifth and Main streets, in the city of Kansas, Missouri, aforesaid, by C. S. Wilson, attorney for complainant, and C. I. Thompson, attorney for defendant, and the witnesses, to wit, Howard M. Holden and James E. Seaver, who were of sound mind and lawful age, and were
711 by me sworn and examined, and their examination was by me reduced to writing and subscribed by them in my presence on the day, between the hours, and at the place in that behalf first aforesaid.

I do further certify that I am not of counsel nor attorney for either of the parties to the suit in the controversy or in any way interested in the event of said suit.

In testimony whereof I have hereunto set my hand and notarial seal this 23rd day of July, 1888.

STEWART TAYLOR,
[SEAL.] *Notary Public within and for the County of Jackson, State of Missouri.*

I do hereby certify that the costs to be taxed for the foregoing depositions and which have been paid by the defendant are as follows:

Notary's fees, $30.00.

STEWART TAYLOR,
[SEAL.] *Notary Public.*

(Endorsed:) No. 2244. Circuit court U. S. John C. Johnston *vs.* The Standard Mining Co. *et al.* Deposition of Howard M. Holden & James E. Seaver for defendant. Opened, published, and filed Dec. 1, 1888. William A. Willard, clerk.

712 And afterwards and on, to wit, the 1st day of March, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable

Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Interlocutory Decree.

JOHN C. JOHNSTON *vs.* THE STANDARD MINING COMPANY OF KANSAS City, The Fulton Mining Company, Isaac W. Chatfield, Charles I. Thompson, and Daniel Sayre, Impleaded with William J. Wilson, Edward Dunscomb, and William J. Anderson.	In Chancery. Bill for a Deed, an Accounting, and for Other Relief.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it appears that the complainant may be entitled to a decree for one-eighth interest in the proceeds of the J. C. Johnston and Chatfield mines and premises described in the complaint, deducting such expenses as are mentioned in the agreement, Exhibit "D," in said cause as chargeable to complainant, such amounts to be adjudged against the parties who are in the possession of said property, claiming the same at the various times shown by the evidence in said cause according to the dates of their several conveyances; and it appearing from the evidence that the defendant The Fulton Mining Company, as grantee of the defendant Isaac W. Chatfield, perfected and established the title to said J. C. Johnston lode by procuring a United States patent therefor, bearing date the 21st day of February, 1884,
713 and that the said Fulton Mining Company held said title from said date until the 5th day of July, 1886, and then conveyed the same to William J. Anderson as trustee for the use of said Fulton Mining Company, and that the said Anderson held such title as such trustee until the 17th day of June, 1887, and then conveyed the same to the defendant The Standard Mining Company of Kansas City, which company has held said title from said last-mentioned date until the present, and that said defendants, The Fulton Mining Company and The Standard Mining Company of Kansas City, have mined, extracted, and sold large quantities of valuable ores from said premises during the time that they have held said title respectively as aforesaid; and it appearing to the court an accounting thereof should now be taken, it is now ordered, adjudged, and decreed as follows:

That an accounting be taken between the complainant and said defendants, The Standard Mining Company of Kansas City and The Fulton Mining Company, and all persons claiming by, through, or under them or either of them of the proceeds of said property and of all proper expenditures thereon until the stating of such account, and that said account be taken and stated by Robert G. Withers, Esq., as master in chancery at Aspen, Colorado, who is hereby appointed for that purpose and who shall exercise all the powers of a master in chancery for that purpose as provided for by the equity rules governing Federal courts, and that said master

shall state and report such account on or before the 15th day of April next, and he is authorized to state and report to the court any specified circumstances needful for explaining said account and his report thereof; and the parties are at liberty to apply to
714 the court as occasion may require, and for such purpose all equities and further directions are reserved until the further order of the court.

And afterwards and on the same day, to wit, the 1st day of March, A. D. 1889, came again the said defendant, The Standard Mining Company, by its solicitors aforesaid, and filed in said court and in said cause its petition for a rehearing, and the said petition is in words and figures as follows, to wit:

Petition for Rehearing by Defendant.

In the United States Circuit Court, District of Colorado. In Chancery.

JOHN C. JOHNSON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*

Now comes defendant The Standard Mining Company and moves for a rehearing for the following reasons:

I.

From the opinion of the court it appears the court was mistaken as to a matter of fact, to wit: The court states that the balance of the stock that was left unissued after the settlement with Holden, who represented the last of the Smuggler claimants, went to Searer for the most part.

This is a mistake, as Searer never received any of it.

715 II.

Under the opinion of the court the interests of defendants necessarily conflict, and as to the points wherein they so conflict they have never been argued or presented to this court, the court declining to pass upon the point to which the argument on both sides was directed.

III.

The law and facts bearing upon the question of notice to this defendant of plaintiff's claim were not only not presented, but it was expressly admitted in writing that defendant did have notice of that which it expressly alleged had no existence.

IV.

Under the opinion of the court complainant is entitled to a decree for an eighth interest in the mine, even though by his deed to Chat-

field of October 12th, 1880, the latter got nothing, because complainant had nothing to convey.

V.

This reasoning may be valid as to the parties to the contract upon the theory that they are estopped to dispute complainant's claim, inasmuch as it was by virtue thereof that they obtained certain stock of this defendant; certainly it can have no force as against this defendant.

VI.

In the original bill of complaint in evidence he asks for this stock so obtained. He alleges again and again in this bill, sworn to by him, that his claim in the mine was conveyed to the mining
716 company by his consent and with his approval, and that stock was to be issued therefor, which was issued, and that the parties to whom it was issued were to account for it.

This appears again and again from his evidence in this case.

VII.

Hence, upon the theory that plaintiff is entitled to recover, he ought to do so, if at all, against his trustees, to whom the stock was so issued, and not against this company, which, by so issuing stock, thereby in reality conveyed to his trustees the interest in the mines, which he claims.

VIII.

Should the decree be allowed to stand, it in reality compels the company to convey an eighth interest in the mine a second time.

O. H. DEAN &
C. O. TICHENOR,
Solicitors of Defendant, The Standard Mining Company of Kansas City.

(Endorsed:) No. 2244. In U. S. circuit court. Jno. C. Johnston *vs.* (in chancery) The Standard Mining Co. of Kansas City. Petition for rehearing by the Standard M. Co. Filed Mar. 1, 1889. William A. Willard, clerk. O. H. Dean & C. O. Tishenor, sol'rs for def't.

717 And afterwards and on, to wit, the 2nd day of March, A. D. 1889, came again the said defendant, The Standard Mining Company, by its solicitors aforesaid, and filed in said court and in said cause a certificate authorizing C. O. Tichenor to appear for it and as its attorney herein; and the said certificate is in words and figures as follows, to wit:

Certificate—Tichenor to Appear for Standard Mining Company.

OFFICE STANDARD MINING COMPANY,
KANSAS CITY, MO., *Jan. 14th*, 1889.

This is to certify that C. O. Tichenor, Esq., attorney-at-law, of this city, is hereby authorized and employed to be present at the rendering of the decision of the court in the case of J. C. Johnston *vs.* Standard Mining Company *et al.*, now pending in the United States circuit court for the district of Colorado, and thereupon to appear as the attorney of this company in behalf of its interests and to represent its interests before said court with respect to the matters involved in said case.

By authority of the board of directors:

HOWARD M. HOLDEN,
[SEAL.] *President Standard Mining Company.*

(Endorsed:) No. 2244. Circuit court U.S. John C. Johnston *vs.* The Standard Mining Co. *et al.* Authority of C. O. Tichenor to appear for the Standard Min'g Co. Filed Mar. 2, 1889. William A. Willard, clerk.

718 And afterwards and on, to wit, the 15th day of April, A. D. 1889, came Robert G. Withers, Esq., a master in chancery of this court, and filed in said court and in said cause his report of the matters referred to him by the decree of the court; and the said report is in the words and figures as follows, to wit:

Master's Report.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court of the United States, in the District of Colorado, Sitting at Denver.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF Kansas City, The Fulton Mining Company, Isaac W. Chatfield, Charles I. Thomson, and Daniel Sayre, Impleaded with William J. Wilson, Edward Dunscomb, and William J. Anderson, Defendants. } No. 2244. In Chancery.

Report of Robert G. Withers, master in chancery.

To the honorable circuit court of the United States for the district of Colorado:

Pursuant to a decree of court, dated the first day of March, 1889, a copy whereof is hereto annexed, before me, Robert C. Withers,

special master in chancery appointed by said decree and directed to take and state the accounts between the complainant and said defendants, The Standard Mining Company of Kansas City and
The Fulton Mining Company, and all persons claiming
719 by, through, or under them or either of them, of all the proceeds of the J. C. Johnston and Chatfield mines and premises described in complaint and of all proper expenditures thereon until the stating of said account, Edward F. Browne, the superintendent of said The Standard Mining Company of Kansas City, a witness of lawful age, was produced, sworn, and examined by Edward C. Stimson, Esq., of counsel for complainant, and by Charles I. Thomson, Esq., of counsel for defendants, and the books of the defendant mining companies were produced and offered in evidence, and no further or other testimony was offered by either complainant of defendants except certain statements of facts agreed upon by said respective parties to be correct.

Whereupon I, Robert G. Withers, said master in chancery, do find and report to the court as follows, to wit:

The value of ores extracted and sold from J. C. Johnston and Chatfield mines by the Fulton Mining Company from the 12th day October, 1880, down to the first day of July, 1887, is eighty-five thousand six hundred and ninety-eight dollars and thirty-four cents ($85,698.34).

That there was expended by the Fulton Mining Company for development work on said mines and expenditures incident thereto during the aforesaid period of time the following amounts, to wit:

720	Surveys	324 25
	On account of pay-rolls	38,692 13
	Taxes	146 27
	Improvements	1,612 13
	Machinery and fixtures	2,899 40
	Tools	389 98
	Ore sacks	231 50
	Road to mine	460 05
	Development account	23,212 00
	Interest and exchange	1,000 00
	Expenses Fulton Mining Company not included above	8,392 30
	Mine purchase, Chatfield mine	205 00
	Legal expenses, Chatfield injunction suits	5,451 24
		$83,016 30

That the value of ores extracted and sold from said J. C. Johnston mine and Chatfield mine by the Standard Mining Company from the 1st day of July, A. D. 1887, down to the 1st day of April, 1889, is one hundred seventy thousand five hundred fifty-nine dollars and seventy-one cents ($170,559.71).

That there was expended for development work on said mines and expenses incident thereto by the Standard Mining Company within the last aforesaid period of time the following amounts, to wit:

721	For surveying	175 00
	Pay-rolls	87,663 95
	On account of taxes	95 20
	Machinery and fixtures	5,438 66
	Sampling	1,102 86
	Assays and analyses	2,660 00
	Light account	2,235 86
	Wood and timbers	3,330 45
	Hauling account	9,995 41
	Live stock	175 00
	Fuel account	2,227 05
	Superintendence	5,250 00
	Office expenses	42 00
	Expenses not included in above	10,659 96
	Taxes for 1888	597 80
		$131,649 20

Recapitulation.

Total value of ores extracted prior to July 1st, 1887	$85,698 34
Total expenditures prior to July first, 1837	83,016 30
Leaving total profits during that time	$2,682 04
Total receipts from ore from July 1st, 1887, to April 1st, 1889	170,559 71
Total expenditures from July 1st, 1887, to April 1st, 1889	131,649 20
Leaving total profits during that time	$38,910 51
722 Total net profits realized by Fulton Company	$2,682 04
" " " " " Standard "	38,910 51
Total	$41,592 55
One-eighth net profits of Fulton Mining Company	335 25
One-eighth " " " Standard " "	4,863 81
One-eighth total net profits	5,199 06

Given under my hand, at my office, in Aspen, in the county of Pitkin and State of Colorado, this 11th day of April, A. D. 1889.

ROBERT G. WITHERS,
Master in Chancery.

Master's charges, $56.75.
Paid by complainant.

ROBERT G. WITHERS,
Master in Chancery.

Agreed Statement.

The value of ores extracted and sold from said J. C. Johnston and Chatfield mines by the Fulton Mining Company, from the 12th day of October, 1880, down to the first day of July, 1887, is $85,694.34.

That there was expended by the Fulton Mining Company for development work on said mines and expenditures incident thereto during the aforesaid period of time the following amounts, to wit:

723	Surveys	324 25
	On account of pay-rolls	38,692 18
	Taxes	146 27
	Improvements	1,612 13
	Machinery and fixtures	2,899 40
	Tools	389 98
	Ore sacks	231 50
	Road to mine	460 05
	Development account	23,212 00
	Interest and exchange	1,000 00
	Expenses Fulton Mining Company not included above	8,392 30
	Mine purchase, Chatfield mine	205 60
	Legal expenses, Chatfield injunction suits	5,451 24
		$83,016 30

That the value of ores extracted and sold from said J. C. Johnston and Chatfield mines by the Standard Mining Company from the 1st day of July, 1887, down to the 1st day of April, 1889, is $170,559.71.

That there was expended for delvelopment work on said mines and expenses incident thereto by the Standard Mining Company within the last-aforesaid period of time the following amounts, to wit:

Surveys	175 00
Pay-rolls	87,663 95
Taxes	95 20
Machinery and fixtures	5,438 66
Sampling	1,102 86
Assays and analyses	2,660 00
Light account	2,235 86
Wood and timbers	3,330 45
Hauling account	9,995 41
Live stock	175 00
Fuel account	2,227 05
Superintendence	5,250 00
Office expenses	42 00
Expenses not included in above	10,659 96
Taxes for 1888	597 80
	$131,649 20

724 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver, 87th Day, November Term, A. D. 1888.

FRIDAY, *March* 1*st*, A. D. 1889.

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, The Fulton Mining Company, Isaac W. Chatfield, Charles I. Thomson, and Daniel Sayre, Impleaded with William J. Wilson, Edward Dunscomb, and William J. Anderson.

2244.
In Chancery.

Bill for a deed, an accounting, and for other relief.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it appears that the complainant may be entitled to a decree for one-eighth interest in the proceeds of the J. C. Johnston and Chatfield mines and premises described in the complaint, deducting such expenses as are mentioned in the agreement, Exhibit "D," in said cause as charg-able to complainant, such amounts to be adjudged against the parties who are in possession of said property, claiming the same at the various times shown by the evidence in said cause according to the dates of their several conveyances.

And it appearing from the evidence that the defendant The Fulton Mining Company, as grantee of the defendant Isaac W. Chatfield, perfected and established the title to said J. C. Johnston
725 lode by procuring a United States patent therefor bearing date the 21st day of February, 1884, and that the said Fulton Mining Company held said title from said date until the 5th day of July, 1886, and then conveyed the same to William J. Anderson as trustee for the use of said Fulton Mining Company, and that the said Anderson held such title as such trustee until the 17th day of June, 1887, and then conveyed the same to the defendant The Standard Mining Company of Kansas City, which company has held such title from said last-mentioned date until the present, and that said defendants, The Fulton Mining Company and The Standard Mining Company of Kansas City, have mined, extracted, and sold large quantities of valuable ores from said premises during the time that they have held said title respectively as aforesaid; and it appearing to the court an accounting thereof should now be taken, it is now ordered, adjudged, and decreed as follows:

That an accounting be taken between the complainant and said defendants, The Standard Mining Company of Kansas City and The Fulton Mining Company, and all persons claiming by, through, or under them, or either of them, of the proceeds of said property and of all proper expenditures thereon until the stating of such account, and that said account be taken and stated by Robert G. Withers, Esq., as master in chancery, at Aspen, Colorado, who is hereby appointed for that purpose, and who shall exercise all the

powers of a master in chancery for that purpose provided for by the equity rules governing Federal courts, and that said master shall state and report such account on or before the 15th day of April next, and he is authorized to state and report to the court any special circumstances needful for explaining said account and his report thereof.

726 And the parties are at liberty to apply to the court as occasion may require, and for such purpose all equities and further directions are reserved until the further order of the court.

A true copy as of record.

Teste: WILLIAM A. WILLARD, *Clerk*,
[SEAL.] By F. W. TUPPER, *Deputy Clerk*.

(Endorsed:) No. 2244. Circuit court U. S. John C. Johnston *vs.* The Standard Mining Co. *et al.* Copy of decree & reference to master.

(Endorsed:) No. 2244. Circuit court U. S. John C. Johnston *vs.* The Standard Mining Company of Kansas City *et al.* Report of Robert G. Withers, master in chancery. Filed Apr. 15, 1889. William A. Willard, clerk.

727 And afterwards and on, to wit, the 2nd day of May, A. D. 1889, the same being one of the regular juridical days of the May term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Hearing Continued.

JOHN C. JOHNSTON *vs.* THE STANDARD MINING COMPANY, ISAAC W. CHATFIELD, *et al.*	2244. In Chancery. Bill for a Deed, an Accounting, and for Other Relief.

At this day comes the said complainant, by Hugh Butler, Esq., his solicitor, and the said defendants, by C. I. Thomson, Esq., their solicitor, also come.

And this cause coming on now for rehearing, the hearing and argument is continued to the adjournment of court.

And afterwards and on, to wit, the 3rd day of May, A. D. 1889, the same being one of the regular juridical days of the May term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Hearing Taken under Advisement.

728 JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY, ISAAC W. CHATFIELD, *et al.* } 2244. In Chancery.

Bill for a deed, an accounting, and for other relief.

At this day come again the said parties, by their said solicitors respectively, and the court, having heard the testimony herein and the argument of counsel, doth take the matter under advisement.

And afterwards and on, to wit, the 8th day of July, A. D. 1889, there was handed down and filed in said court and in same cause a certain opinion by the district judge, and the said opinion is in words and figures as follows, to wit:

Opinion on Rehearing.

J. C. JOHNSTON
v.
THE STANDARD M'G CO. *et al.* }

HALLETT, *J.:*

This bill was filed Oct. 7, 1887, seven years after the transactions narrated in it, or if it is supposed that the cause of action arose upon the settlement made by the Fulton Mining Co. with the parties claiming the Smuggler No. 2 title the bill was filed more than five years after that event. Whether this was in good time to secure the aid of a court of equity in a cause of this nature was not presented or considered at the first hearing and is now to be determined.

729 The Chatfield *argument* of Oct. 12, 1880, was to become effectual "in the event of the party of the first part prevailing and succeeded in certain legal proceedings about to be instituted and commenced by the party of the first part against persons who claim adversely to him." The issue thus to be contested by Chatfield was between the J. C. Johnston and the Smuggler No. 2 locations, both of which were made by comp't, and, of course, he would be the principal witness in support of the Johnston title in any suit that might be brought as required by the agreement. Conceding that the entire burden of the litigation was to be carried by Chatfield, complainant's relations to it was such as to call for strict attention to all that was done.

As no progress could be made without his testimony, it may be assumed that he was at all times ready and anxious to ascertain what was being done by Chatfield toward acquiring title to the property. From his own testimony it appears that he was impressed with this view of his relations to the property, for he says that in May, 1881, he went to the office of Thomson & Sayer in Leadville "and asked how the case was and he said it was compromised, and I told him I would like to take the papers to copy them and he gave

them to me, and I took the papers and looked them over and went down to have them copied and found out it would cost too much and so didn't do it.

Q. What papers?

A. Contract between Chatfield and I, Crittenden and Adair and I, and a copy of the original grub-stake contract between Dunscombe, Seaver, and I. I suppose there was a contract between Chatfield and Thomson and Sayer, and I wanted to copy that more than anything else. I don't think that was among the papers."

730 That he wanted "the papers" for the purpose of asserting his claim to the mine under the Chatfield agreement seems clear enough, and no sufficient reason is assigned for not doing so within some reasonable time thereafter.

It is true, as his counsel says, that the compromise was not then complete, but it was in progress. The property had been conveyed to the Fulton Mining Company. Some of the Smuggler No. 2 people had come into the Fulton Co., and efforts were being made to bring in others, and this was accomplished a year later. The way in which the compromise was carried on was to give the stock of the Fulton Co. to the Smuggler claimants according to their respective interests. Any proper assertion *to* his claim to the property pending the compromise would have been effectual to secure his interest without injuring the other stockholders of the Co.

In the cross-examination of Chatfield by complainant's counsel he testified as follows:

"Q. What demands, if any, did Mr. Johnston ever make upon you for his interest in that property?

A. I think in 1882, at Littleton, he spoke to me and said he thought he ought to be entitled to his interest in the property; that we should have gone on and contested that case.

Q. What did you say to him?

Answer. If I recollect right, I told him we found we had no shadow of a ghost to maintain his case and it was divided up among the stockholders; in other words, among the claimants, Dunscomb, Seaver, Acheson, and Holden.

Q. Then this eighth interest which he was to have was divided up among them?

A. I think that was what I told him at that time in Littleton."

731 There is some dispute whether this conversation was before complainant went to Wood River, in 1882, or after his return, in the following year. Whatever the date may be it was after the final settlement, in April, 1882, although, probably, the agreement was not then entered of record in the way of dismissing suits and issuing stock of the Fulton Co. Here, again, complainant was fully informed of the settlement of the controversy and nothing more was necessary to enable him to maintain a suit for his interest. It is said that he understood that suit could not be brought until patent was obtained; that Chatfield constantly informed complainant that the patent had not been issued, and thereby he was misled until in 1885 he learned the truth and brought the first suit in

this court. If any such belief was entertained there was nothing in the agreement to support it; on the contrary, Chatfield agreed to convey "upon so acquiring the title, legal and equitable, to the said mine by means of the legal proceedings so about to be commenced." With the compromise of the "legal proceedings" mentioned in the agreement complainant became entitled to his interest in the property and the patent was of no importance to him.

As showing diligence in asserting his claim, complainant's suit of 1885 in this court is of little weight. It is admitted that it was misconceived in all material aspects, and it was between citizens of the same State, and therefore not within the jurisdiction of the court. It was kept on the docket for eleven months, during which it was not moved at all, and then it was voluntarily abandoned. All the evidence tends to show that with full knowledge of his position and relation to the property no serious effort was made by complainant to enforce the Chatfield agreement for some 5
732 or 6 years, during which work on the property was carried on by the Fulton and Standard Mining Cos. at great expense and the value of the property was established. Under the circumstances he was bound to proceed in the enforcement of *of* his claim within some reasonable time after his cause of action accrued.

The property was held by a corporation, the shares of which in the ordinary course of business would fall into the hands of innocent purchasers. It was not known to be valuable until by development and the expenditure of a large amount of money it was shown to be so. The work of development was carried on for several years, first by the Fulton Co. and afterwards by the Standard Co., while complainant stood by apparently waiting for the result. Where property is of fluctuating value and work requiring courage and energy and the expenditure of money is going on he who would assert ownership in it must do so promptly and share in the hazards as well as the profits of the enterprise. Twin Lick Oil Co. *v.* Marbury, 91 U. S., 587. Complainant failed in such diligence for more than five years and until the great value of the property was fully demonstrated by the defendants claiming adversely. As to the present owner of the property, the Standard Mining Co., the bill must be dismissed.

If complainant wishes to have a decree against Chatfield several questions arise which have not been discussed at the bar: As whether upon dismissing the bill as to a citizen of another State the court may proceed to determine matters in issue between citizens of the same State. At what time did Chatfield's liability arise and what does the evidence show as to the value of the property at that time? Hitherto argument has been confined to the issue between complainant and the Standard Mining Co. If the case is
733 to be pressed against Chatfield it is obvious that further argument will be necessary on that issue.

(Endorsed:) No. 2244. John C. Johnston *vs.* The Standard Mining Co. *et al.* Opinion on rehearing. Filed Jul- 8, 1889. William A. Willard, clerk.

56—133

And afterwards and on, to wit, the 10th day of July, A. D. 1889, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his petition for a rehearing, and the said petition is in words and figures as follows, to wit:

Petition for Rehearing by Complainant.

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

In the Circuit Court of the United States within and for said District.

J. C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY *et al.*, Defendants. } In Chancery.

Now comes the complainant in the above cause and prays for a rehearing thereof on the question of laches upon the following grounds, to wit:

734 I.

In its last opinion the court assumes that complainant's cause of action accrued at the time of the settlement of the controversy and suits between the Smuggler Two and J. C. Johnston parties in 1882. Complainant claims (1) that his cause of action did not arise at that time nor until long after; (2) that if it did arise then, complainant was ignorant of his rights; hence that in neither case has he been guilty of laches.

II.

The court now says there was nothing in the agreement to support complainant's belief and understanding that he was not entitled to his interest until after patent was obtained, but in its first opinion the court held otherwise, according to the understanding of counsel on both sides, the language of the court in construing the contract being as follows: "It seems to have been understood at the time this deed and this agreement were made that Chatfield or some company to be organized by him for owning and managing this property should obtain a patent for this claim from the Government of the United States, and upon all the evidence there is no reasonable ground to doubt that the consideration of this agreement was that this title should be maintained, the J. C. Johnston title, in the courts and elsewhere, if that could be done, and if successful in that that Johnston was to have conveyed to him one-eighth part of it."

And counsel for defendant (Mr. Thomson) claimed on the application for a rehearing that this construction of the contract—*i. e.*, the maintaining of the title by patent proceedings and its effect upon the rights of parties—had not been argued and asked (orally) for a rehearing upon this ground.

735 This question has not been argued yet, but it has been assumed by counsel for complainant, and as we supposed by

the court, that we were entitled to this construction of the contract for the following reasons, among others:

1. It is the construction that the parties themselved placed upon the contract by their acts. The only legal proceedings that Chatfield commenced was the application for patent. He brought no suit and the suits that were brought and compromised were suits against Chatfield and his grantee, the Fulton Mining Company, and therefore not within the letter of the contract.

2. Chatfield, Sayer, and complainant have all testified that an application for patent was contemplated by the agreement, and there is no conflict of testimony on this point.

III.

If the legal proceedings mentioned in the contract did not mean an application for patent, then complainant's cause of action has not yet accrued under the contract for the reason that Chatfield has never commenced any other proceedings, and if the legal proceedings meant or contemplated an application for patent, then his right of action did not accrue until the issuance of patent.

IV.

The interlocutory decree contains the following finding: "It appears from the evidence that the defendant The Fulton Mining Company, as grantee of the defendant Isaac W. Chatfield, perfected and established the title to said J. C. Johnston lode by procuring a United States patent therefor bearing date the 21st day of February, 1884."

736

V.

1st. The testimony of Chatfield concerning the alleged interview in 1882 is false on its face, for it was not true that Johnston's interest had been divided up among the adverse claimants. His interest had been appropriated by Chatfield, Thomson, Sayer, Dunscomb, and Wilson.

2. Assuming the testimony to be true, complainant had no cause of action and he was therefore excused from bringing suit until he learned it to be false.

3. The interview is denied by Johnston.

4. The vague, evasive, and unsatisfactory character of Chatfield's entire testimony entitles it to very little weight.

VI.

Complainant's suit of 1885, though brought in the wrong court and though misconceived in some respects, was yet upon the same cause of action. The contract was set out *in hæc verba;* the same relief was asked as now, with additional relief against the stock of the Fulton Mining Company. The fact that it was pending on demurrer for nine months does not constitute laches.

VII.

The argument that "the property was held by a corporation the shares of which in the ordinary course of business would fall into the hands of innocent purchasers" is answered by the court's first opinion, which holds: "It is incident to a corporation that once affected with notice while it exists it shall be assumed that it has that notice throughout its existence, whoever the individual shareholders may be. If new shareholders take the place of those
737 who were first connected with it they are affected with notice as much as those who were in the organization at the time that notice came to the corporation."

VIII.

The defense of laches was not made at all on the trial. It was not assigned on the petition for rehearing. It was not mentioned or thought of until after the rehearing was granted upon other grounds, viz., the alleged bad faith of one of the counsel, which proved to be a mere pretext and has not been mentioned or heard of since. The defense of laches therefore came too late.

IX.

The court intimates that complainant may be entitled to a decree against Chatfield. If so, he is entitled to a decree against the Standard Mining Company. Nothing is better settled than that a purchaser with notice of a trust or without consideration stands in the shoes of the trustees from whom he takes title and may be compelled to perform the trust, and the Standard Company is in that situation.

X.

The charge of laches on account of the large expenditures of the defendant companies upon a property of doubtful and fluctuating value is also refuted by the fact that the agreement provides for the development of the property by Chatfield, and that complainant should not be called upon to contribute until after receiving back his interest. The agreement provides "that the party of the second part (Johnston) for and in consideration of the covenants and agreements to be kept and performed as hereinbefore mentioned, doth covenant and agree to and with the party of the first part upon having or receiving the title — an undivided one-eighth in-
738 terest in and to the said lode to pay an undivided one-eighth part of the expenses which shall accrue in the development and opening the said above-described lode."

XI.

Assuming that complainant was entitled to his interest upon the compromise of the suits in 1882, it was the duty of his trustee to deed him his interest and not his duty to demand it.

Until demand and refusal there was privity between them and

no cause of action existed. The demand and refusal did not occur until 1885, immediately before the bringing of the first suit.

Respectfully submitted.

HUGH BUTLER &
WILSON & STIMSON,
Sol'rs for Complainant.

(Endorsed:) No. 2244. U. S. circuit court, dist. of Colorado. J. C. Johnston *vs.* Standard M'ng Co. *et al.* Petition for rehearing by complainant. Filed Jul- 10, 1889. William A. Willard, clerk. Hugh Butler & Wilson & Stimson, sol'rs for compl'nt.

And afterwards and on, to wit, the 22nd day of July, A. D. 1889, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his petition for a receiver; and the said petition is in words and figures as follows, to wit:

Petition for a Receiver.

739 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court.

JOHN C. JOHNSTON, Complainant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*, Defendants.

To the honorable the judges of the circuit court of the United States, in chancery sitting:

The petition of John C. Johnston, complainant in the above-entitled cause, respectfully shows unto your honors that he is informed and believes and so states that the J. C. Johnston mine, a portion of which your petitioner sues for in said cause, is so developed and opened as to permit of very rapid and extensive mining of the ores contained therein, and consequently of the speedy destruction of the value and substance of said estate; that said mine has been opened by a system of five levels or drifts on said vein, extending for nearly the entire length of said claim to a depth varying from five hundred (500) to nine hundred (900) feet on said vein from the surface; that by means of said levels and drifts and by means of sundry stopes and inclines connecting the same large bodies of ore have been blocked out and exposed in said mine and are now ready to be mined; and your petitioner is informed and believes and so states that less than one-fifth of the ore that has been so blocked out and exposed has been extracted from said mine, and that the value of the ore so exposed is not less than five hundred thousand dollars.

740 Your petitioner further says that he is informed and believes and so states that the said Standard Mining Company is actively engaged in mining and disposing of the ores in said mine and is selling and shipping the same at the rate of about thirty tons per day; that said defendant, The Standard Mining Company, is working said mine with a force of about forty men, but that a much larger force of men could work in said mine and a much greater quantity of ore could be mined therefrom, and that said defendant threatens and proposes to employ a much larger force of men and to work the property far more extensively than now within a short time and as soon as the working of said mine shall be connected with the working of certain other mines, to wit, the Park and Regent mines, adjoining the said J. C. Johnston, and said mines are thereby ventilated.

Your petitioner further shows that during the three or four years which will intervene before this cause can be reached and decided by the Supreme Court of the United States said ore bodies so exposed can be wholly mined out and the value of said property and complainant's interest therein can be wholly destroyed and unless the interest which he claims therein can be wholly preserved pending said appeal the same will be of no avail to him.

That, as appears by the evidence and also by the stipulation of counsel in said cause, the defendant The Stand- Mining Company of Kansas City has no assets or property other than said J. C. Johnston mine and premises and will, therefore, be wholly unable to respond in damages to complainant in case he finally recovers judgment against the defendant and in case the ores in said mine should be worked out and exhausted as threatened by said defendant.

741 Petitioner further shows that there is a reasonable probability of his ultimately succeeding in said suit, and that the defense of laches on which complainant was defeated in said suit is, to say the least, a doubtful defense, so doubtful, in the defendant's estimation, that the same was not made upon the pleadings, proofs, or arguments in said cause nor even on the petition for a rehearing thereof; that, on the contrary, counsel for defendants on the first argument of said cause expressly disclaim that complainant had been guilty of laches.

Your petitioner further shows that if the relief herein prayed shall be denied, his right of appeal will for the reasons aforesaid be practically destroyed.

Wherefore your petitioner prays that a proper person may be appointed receiver of an undivided one-eighth interest in said J. C. Johnston mine, to take possession thereof jointly with the defendants The Standard Mining Company of Kansas City, and to receive and hold the rents and profits thereof pending the appeal in this cause and until the further order of this court, and that said defendants be required to account for and pay over to said receiver the proceeds from said one-eighth interest; and, further, that said receiver have free access to the premises and to all writings, papers, vouchers, and books of account of the said defendant pertaining to said mine and the working thereof, and that such other and further relief

may be had in the premises as equity may require and as the court may deem just.

HUGH BUTLER AND
WILSON & STIMSON,
Solicitors for Complainant.

742 STATE OF COLORADO, } ss:
County of Arapahoe, }

Charles S. Wilson, being first duly sworn, on his oath says that he is one of the attorneys and solicitors for the complainant in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be on the information and belief of complainant, and as to those matters he believes it to be true.

And, further, that he makes this affidavit for reason that the complainant is not accessible, being absent from the State of Colorado, and therefore unable to verify said petition.

CHARLES S. WILSON.

Subscribed and sworn to before me this 15th day of July, A. D. 1889.

F. H. STOCKMAN,
[SEAL.] *County Clerk.*

(Endorsed:) No. 2244. U. S. circuit court. John C. Johnston, plaintiff, *vs.* Standard Mining Co. *et al.*, defendants. Petition for receiver. Filed Jul- 22, 1889. William A. Willard, clerk.

743 And afterwards and on, to wit, the 25th day of July, A. D. 1889, the same being one of the regular juridical days of the May term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Decree; Appeal Prayed.

JOHN C. JOHNSTON
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, Isaac W. Chatfield, Charles I. Thomson, Daniel Sayer, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company.

2244. In Chancery. Bill for a Deed, for an Accounting, and for Other Relief.

This case came on to be further heard at this term and was further argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First. That the equities of the cause were with the defendant The Standard Mining Company of Kansas City, and not with the complainant, and that the bill of complaint herein against the said defendant be dismissed.

Second. The complainant declining to proceed against the said defendant Isaac W. Chatfield and the other defendants, that this case, as to all of the defendants except said defendant The
744 Standard Mining Company, be remanded to the district court of Pitkin county, Colorado, from whence it came, for such further action therein as to said complainant may seem advisable.

Third. That the said defendant The Standard Mining Company do have and recover its costs in this behalf expended against said complainant, to be taxed, and that it have execution therefor.

Fourth. That said complainant's prayer for an appeal to the Supreme Court of the United States be allowed upon his giving bond or upon the giving of a bond in his behalf in the penal sum of three thousand dollars, conditioned according to law and with good and sufficient sureties, to be approved by the clerk of this court, within sixty days from this date.

Fifth. And it appearing to the court upon the petition and showing made by the complainant, and after argument of counsel and due consideration by the court, that the value and substance of the property mentioned in the bill of complaint and in controversy in this suit may be greatly impaired, wasted, or wholly destroyed before the appeal can be heard and determined herein, it is further ordered, adjudged, and decreed that the said defendant The Standard Mining Company be required to give a bond in the penal sum of seventy-five thousand dollars, with good and sufficient sureties, to be approved by the clerk of this court, within sixty days from the date hereof, conditioned that the said defendant The Standard Mining Company will perform and abide by any and all orders, decrees, or judgments against the said Standard Mining Co. which may be made or entered by said Supreme Court on said appeal or by this court if said appeal be sustained in whole or in part and said cause be remanded to this court.

745 Sixth. That notwithstanding the entry of this decree and the allowance of the appeal therefrom this cause shall remain on the docket of this court from term to term until the further order of this court, and the court reserves to itself all power necessary to make any further orders or decrees which may be necessary to carry out all the terms and provisions of this decree.

Seventh. That if the said defendant The Standard Mining Company shall fail, neglect, or refuse to give said bond herein provided for and required the said complainant may at any time after such default, whether in term time or vacation, apply for an injunction and for the appointment of a receiver and for such other and further relief as may be necessary or appropriate.

And afterwards and on, to wit, the 29th day of July, A. D. 1889, the same being one of the regular juridical days of the May term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Motion for a Bill of Exceptions Denied.

JOHN C. JOHNSTON *vs.* THE STANDARD MINING COMPANY OF KANSAS CITY *et al.*	2244. In Chancery. Bill for a Deed, an Accounting, and for Other Relief.

At this day comes the said complainant, by Hugh Butler, Esq., his solicitor, and moves the court for leave to present to the court a bill of its exceptions herein.

And because a bill of exceptions is unknown in equity practice it is ordered by the court that the said motion be denied.

746 And afterwards and on, to wit, the 5th day of September, A. D. 1889, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his bond on appeal to the Supreme Court of the United States, and the said bond is in words and figures as follows, to wit:

Bond on Appeal.

THE UNITED STATES OF AMERICA, *District of Colorado.*

Know all men by these presents that John C. Johnston, as principal, and Rich'd J. Bolles, W. E. Newberry, and M. J. McNamara, as sureties, are held and firmly bound unto the Standard Mining Company of Kansas City in the full and just sum of three thousand dollars, to be paid to the said Standard Mining Company; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at the November term, A. D. 1888, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between John C. Johnston, complainant, and The Standard Mining Company impleaded with others, defendants, a decree was rendered against the said John C. Johnston, complainant, and in favor of said Standard Mining Company, defendant, from which said decree the said Johnston, complainant, prayed and obtained an appeal to the Supreme Court of the United States,
747 returnable to the next regular term of said court to be held at Washington on the 14th day of October next:

Now, the condition of the above obligation is such that if the said John C. Johnston, complainant, shall prosecute said appeal to effect and answer all damages and costs if he fail to make good his plea,

then the above obligation to be void; else to remain in full force and virtue.

JOHN C. JOHNSTON. [SEAL.]
RICH. J. BOLLES. [SEAL.]
W. E. NEWBERRY. [SEAL.]
M. J. McNAMARA. [SEAL.]

Approved.

—— ——, *Judge.*

Justification.

THE UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Richard J. Bolles, W. E. Newberry, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real and personal property at least the sum below set opposite his name—that is to say, as to said Richard J. Bolles, three thousand dollars; as to said W. E. Newberry, three thousand dollars—over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

748

RICH. J. BOLLES.
W. E. NEWBERRY.

Subscribed and sworn to by the above-named Rich'd J. Bolles and W. E. Newberry before me, at Aspen, this 28th day of August, A. D. 1889.

ROBERT G. WITHERS,
U. S. Commissioner for the District of Colorado.

(Endorsed:) No. 2244. In the circuit court of the United States in and for the district of Colorado. John C. Johnston, complainant, *vs.* The Standard Mining Company *et al.*, defendants. Appeal bond. Approved and filed Sept. 5, 1889. William A. Willard, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings and of all opinions heretofore filed or had and entered of record in said court and in a certain cause now in said court pending, wherein John C. Johnston is complainant and The Standard Mining Company of Kansas City and others are defendants, as fully and completely as the same still remain on file or of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this eleventh day of September, A. D. 1889.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

749 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States, of the October Term Thereof, A. D. 1889.

JOHN C. JOHNSTON, Appellant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY, Appellee, Impleaded with Isaac W. Chatfield, Charles I. Thomson, Daniel Sayer, William J. Wilson, Edward Dunscomb, William J. Anderson, and The Fulton Mining Company.

Appeal from the circuit court of the United States in and for the district of Colorado.

And now comes the said appellant, by Hugh Butler, his counsel and solicitor, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The said circuit court erred in finding the issues in favor of the appellee.

Second. The circuit court erred in refusing to find the issues in favor of the appellant and in refusing to find that he was the owner of an undivided one-fourth of the mining property in said complaint mentioned and described.

Third. The court erred in dismissing the complainant's bill of complaint.

750 Wherefore, and for divers other reasons and causes appearing on the face of the said record, the said appellant prays that the judgment and decree of the court below be reversed, and that the said cause be remanded to said court for further proceedings according to law.

HUGH BUTLER,
Counsel for Appellant.

Endorsed on cover: Case No. 13,709. Colorado C. C. U. S. No. 133. John C. Johnston, appellant, *vs.* The Standard Mining Company of Kansas City. Filed October 7, 1889.

FILED.
JAN 11 1893
JAMES H. McKENNEY,
CLERK.

CASE NO. 13709.

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1892.

TERM NO. 133.

JOHN C. JOHNSTON,
Appellant,
vs.
THE STANDARD MINING COMPANY OF KANSAS CITY,
Appellee.

Appeal from the Circuit Court of the United States, for the District of Colorado,

BRIEF AND ARGUMENT FOR APPELLANT.

LEON D. GENESTE,
Counsel for Appellant.

HUGH BUTLER,
Of Counsel.

L. J. KELLY, PRINTER, DENVER.

CASE NO. 13709.

The Supreme Court

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OCTOBER TERM, 1892.

TERM NO. 133.

JOHN C. JOHNSTON, *Appellant,* vs. THE STANDARD MINING COMPANY OF KANSAS CITY, *Appellee.*	*Appeal from the Circuit Court of the United States, for the District of Colorado,*

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT.

This action was commenced in the District Court of Pitkin County, Colorado, on the 15th day of October, 1887, by the filing of a complaint

NOTE.—For the convenience of the Court, we have rearranged the Index to the Transcript of Record and have printed the same in the appendix to this brief for the purpose of exhibiting the evidence in something like logical and chronological order, so avoiding the random results of printing the record according to the date of filing the depositions, etc., which has been pursued.

(fol. 2) drafted under the Civil Procedure Act of Colorado. The relief asked (fol. 16) is, that the plaintiff, J. C. Johnston, be adjudged to be the owner of an undivided one-fourth interest in The J. C. Johnston Lode Mining Claim and premises, situate in Pitkin County, Colorado, and that the defendant, The Standard Mining Company, of Kansas City, holding the legal title to said interest, be required to execute a deed therefor to the plaintiff. An accounting from the Standard Mining Company and its grantors is also prayed and alternative relief is asked against the defendants, Chatfield, Thomson and Sayer.

November 21, 1887 (fol. 25), the Standard Mining Company filed its petition for the removal of the cause to the United States Court at Denver, Colorado, upon the ground that the controversy between itself and the plaintiff was a separable controversy and between citizens of different states, which petition was granted and the cause was removed (fol. 28.) Transcript from State Court filed January 1, 1888 (fol. 1). March 5, 1888, the Standard Company filed its separate answer in the Federal Court (fol. 31); complainant filed replication thereto March 31, 1888 (fol. 55).

On the issues thus made, the evidence was taken before a Master and by depositions. The cause was heard by the District Judge November 13, 1888 (fol. 656), and taken under advisement. March 1, 1889 (fol. 712), an interlocutory decree was made and an accounting ordered on behalf of the complainant. In explanation of this decree and of the petition for a rehearing by the defendant which follows (fol. 714) it should be stated that some time

prior to the entry of this decree, and after holding the cause under advisement for several months, the Court had delivered its opinion on the merits, and had ordered a decree in favor of the complainant for an undivided one-eighth of the property, and had also ordered an accounting of the proceeds of this interest.

This opinion was not filed, and, therefore, does not appear in the record, but the District Judge has certified to it and consents that it may be used in any way that counsel may desire. We, therefore, desire to append it to this brief and adopt the same as a part of our statement and argument before this Court. See appendix, p. 85 .

Upon the delivery of this opinion the defendant prayed a rehearing, assigning eight grounds therefor in its petition (fol. 714). On the presentation of this petition, and before the same had been heard, the interlocutory decree was made, in which the Master was ordered to state and report an account of the proceeds of the mine by the 15th day of April following, at which time the report was filed (fol. 718). No order was made on this petition for rehearing, but the Court stated that he would hear counsel at some later date.

May 2, 1889, counsel appeared for the respective parties. Counsel for complainant naturally supposed that the arguments would be limited to the grounds stated in defendant's petition for a rehearing; but the Court imposed no limitation to the arguments, and the cause was reheard without reference to the grounds relied upon in the petition for rehearing, which, it should be noted, did not raise the question of laches on which the last

decision is based, nor had this question been raised at any time prior to the last hearing. The cause was again taken under advisement, and on July 8, 1889, the Court delivered its second opinion (fol. 729), which is reprinted herewith, p. 102, Appendix.

Thereupon (fol. 733), the complainant filed a petition for rehearing on the question of laches, which was the sole ground of the final decree. We also reprint this petition, Appendix, p. 102, and adopt it as a portion of our brief on this branch of the case.

This petition was denied by the Court without argument, though no order appears to have been made upon it. Prior to the final decree, the complainant filed a petition for a receiver to collect and hold the proceeds of the interest claimed by him, pending his appeal to this Court. This was denied, but in lieu thereof the Court required the Standard Company to execute a bond to the complainant in the sum of $75,000, conditioned on the further order of the Circuit Court or this Court. This appears in the final decree (fol. 743) which reserves the necessary jurisdiction to the District Court.

A further statement of the case will be found in the following:

ARGUMENT.

The controlling questions in this case, according to our view of it, are:

1. Was the deed (fol. 441) from complainant to defendant Chatfield, of October 12, 1880, conveying all of complainant's interest in the J. C. Johnston Mine, made in trust as to any portion of

the interest conveyed, and if in trust as to any part, what was the trust?

2. What has been done by Chatfield and his grantees in pursuance of the trust? Has it been been performed or violated?

3. What, if any, interest is the complainant entitled to recover in the premises?

The question of notice of the trust, if there was a trust, to the present defendant and claimant, the Standard Mining Company, of Kansas City, has been eliminated by a stipulation which admits that such notice has been sufficiently proven, as charged in the complaint, but denies that there was any trust. The stipulation is as follows (fol. 653):

(Title.)

It is hereby agreed and admitted that the complainant has sufficiently proven notice to the defendant, the Standard Mining Company, of Kansas City, as charged in the bill of complaint, of the trusts and conditions, if any, on which the defendant, I. W. Chatfield, took complainant's deed, on the 12th day of October, 1880, of all complainant's interest in the J. C. Johnston Mine and premises, described in the complaint, and it is agreed that the complainant need take no more testimony on said question of notice; and the defendant, the Standard Mining Company, of Kansas City, hereby waives and withdraws its denial of notice in this behalf, contained in its answer in this cause, but does not waive or withdraw its denials that there was any such trust or condition as alleged in the complaint.

It is further agreed and admitted that the de-

fendant, the Standard Mining Company, of Kansas City, has no property or assets, excepting the J. C. Johnston and Chatfield Mining Claims, described in the complaint.

It is further stipulated by both parties hereto, that either may amend the pleadings to correspond with the proofs taken or to be taken, and with the stipulations of fact made in this cause, and that said pleadings shall be deemed and taken as amended, accordingly for the purpose of the hearing and decree in this cause.

C. S. WILSON,
for Complaint,
CHAS. I. THOMSON,
for Standard Mining Co.

This stipulation also provides for the amendment of pleadings by either party to correspond with proofs, and we shall argue the case accordingly.

I.

Was the deed in trust as to any portion, and if so, what was the trust?

The complaint had executed a title bond to Chatfield on the 14th day September, 1880, whereby he agreed to sell and convey to Chatfield, a fourth interest in the J. C. Johnston and one-half his interest in other claims, including the Smuggler Two, for a stated consideration of $1,200, payable as follows: One hundred dollars cash, a team of horses, taken at $350, and the balance in monthly installments of $100, except the last installment, which was for $150. (Fol. 441).

The bond was executed in Denver and the first payment of $100 was made, but the team which

was at Leadville, was not delivered at that time. About a month later, complainant went to Leadville to get the team and the second installment which was about falling due.

Mr. Chatfield who was at Leadville, represented, and Johnston was made to believe that the J. C. Johnston title, or some part of it, had become involved in a litigation with the Smuggler Two Mining Claim. Chatfield, therefore, refused to deliver the team or pay any more money on the bond, unless Johnston would emply counsel to defend the Johnston title (fols. 328–330). Thereupon, on Chatfield's suggestion and recommendation, they go to the office of Messrs. Thomson and Sayer, attorneys at Leadville, and lay the case before them. The nature of the alleged controversy was fully explained and discussed. Probably it was already well understood by all the parties to the interview (fol. 345, 429, 146).

A great deal of testimony has been taken upon this old controversy concerning the relative merits of the Smuggler Two and the J. C. Johnston locations, and the defendant seems to have staked its defense mostly, if not altogether, upon this issue. But in view of the subsequent recognition and adoption of the J. C. Johnston title by purchase and otherwise, and the waiver and abandonment of the Smuggler 2 title by all parties concerned, as hereafter shown, this, in our judgment, was an immaterial issue except for the purpose of showing the situation of the parties at the time of the principal transaction on which this case arises, and particularly in explanation of the contract executed by Mr. Chatfield which refers to this controversy. Such was the

fendant, the Standard Mining Company, of Kansas City, has no property or assets, excepting the J. C. Johnston and Chatfield Mining Claims, described in the complaint.

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view taken by the Circuit Court (see first opinion), but from the standpoint mentioned we will give some space to its discussion.

In the summer and fall of 1879, the complainant made and partially completed a large number of mining locations in the Roaring Fork Mining District near Aspen, Colo. In the following winter a friend of his, named A. L. Rouze, worked up a "deal" with three gentlemen from Kansas City, which resulted in the execution of a contract which, in substance, is as follows (fols. 325, 101):

Articles of agreement made this 7th day of February, 1880, between J. C. Johnston and A. L. Rouze, parties of the first part, and J. C. Acheson and James E. Seaver and Edward Dunscomb, parties of the second part—

WITNESSETH, That the parties of the first part, in consideration of one dollar and certain acts to be hereafter done and performed by the party of the second part, agree to pass title to the parties of the second part to *one-half* of certain locations in the Roaring Fork Country, Gunnison County, Colorado, including the so-called Little Pearl, Badger Boy, Tip-Top, John G. Lillie, Long Johnston, Detective and eleven more unnamed but located claims partially described in a certain sketch of the camp, given by the parties of the first part to the parties of the second part.

Parties of the first part further agree to devote their time and attention to prospecting and making locations, and, where deemed necessary, working assessments on locations and on all locations made by them during the season of 1880; to give to the

parties of the second part a half interest and to put their names jointly on all stakes set.

In consideration of the foregoing, the parties of the second part agree to pay said Johnston and Rouze, on starting for Roaring Fork, $275 to pay for their outfit and one month's advance wages; *to pay them $37.50 each per month for expenses* and to pay them for all work done on the claims in *pushing developments* and where deemed best in working assessments. And where a claim is sold, the proceeds of such sale are to be divided between the parties of the first and second parts, after re-imbursing the parties of the second part for all moneys expended on the claim and paying to the parties of the first part $200, if sale amounts to enough, except as to Little Pearl, in which case the party of the first part is to receive $1,500, instead of $200, as in other sales on the same conditions as above. And the parties of the second part are to go on and develop the Little Pearl lode (afterwards Smuggler Two) provided they can secure the co-operation of the rest of the owners of such lode. The parties of the second part are to have the bonding and selling of all claims owned by the company and are to have the option to purchase the interests of the parties of the first part in case they desire to sell any of the property acquired under this contract, and the parties of the first part agree to start for Roaring Fork whenever called upon by the parties of the second part.

(Signed.) JOHN C. JOHNSTON,
J. C. ACHESON,
JAS. E. SEAVER,
EDWARD DUNSCOMB.

This contract was prepared by Mr. Acheson (fol. 369).

The parties of the second part were all greatly embarrassed financially, but that fact was not known to Johnston and Rouze at that time. Dunscomb had sold some real estate in Kansas City which belonged to his wife, and with the proceeds of this sale he says he was carrying his partners, as well as himself, in the Colorado enterprise, and furnished all the money that was paid excepting certain moneys that were realized upon sales of interests in the claims located (fols. 159, 172). Early in the following spring an outfit was obtained in Denver and Johnston and Rouze started for Aspen. They went on horseback and were met at Buena Vista by Dunscomb and Seaver, who went up on the cars (fol. 372). At this point Mr. Rouze, for some reason, withdrew from the contract (fols. 369, 695). Thereupon it was verbally agreed that his interest, one-fourth, in the property, covered by the contract, should belong to the parties of the second part, Acheson, Dunscomb and Seaver, but that the amount of his monthly wages or expenses, viz: $37.50, should be paid to Johnston (fols. 369, 370 and 695).

We deem it important to call attention to this new arrangement, and particularly to the fact that the sole consideration for which the parties of the second part were to have the Rouze interest was that they should pay to Johnston $37.50 per month; not as wages or expenses, for, of course, Johnston could not earn Rouze's wages or incur Rouze's expenses and his own too, *but in payment* for this one-fourth

interest which originally belonged to Johnston and which he had given to his friend Rouze. Not only did Johnston never receive this consideration, but with the exception, perhaps, of $25 or $50, he never received anything for his own wages or expenses.

Soon after arriving at Aspen, and on the 15th day of April, 1880, the Smuggler Two, was located (fol. 547). It appears to have been a re-location of the Little Pearl mentioned in the contract (fol 371). The location work was done and the claim surveyed upon or about the 8th day of June (fol. 548), and on the following day (fol. 335) the location certificates of this and other claims were made out. The certificate was recorded on the 8th of the following July (fol. 548). At the time of its location it was not a valid claim for want of a valid discovery of mineral (fols. 247, 333). Mineral was discovered about July 1st, but no well defined vein was disclosed until shortly before the J. C. Johnston location August 4th (fols. 239, 440). The Smuggler Two was located in the names of Johnston, claiming one-fourth, Belle Seaver and Margaret Dunscomb, each claiming three-eighths in the location (fol. 547). Mr. Acheson who had charge of the selling and bonding of claims and who held powers of attorney from the locators (fol. 551), considered that his interest was protected in this manner (fol. 67). Dunscomb and Seaver came to Aspen some time in May and remained until about the 10th of June, when they took the location certificates of the claims that had been located and left the camp (fols. 158, 375, 688, 333). At this time they were getting short of money and supplies and were already considerably in debt (fol. 159, 160,

173, 334). Dustan, who was one of the workmen and who came in with Dunscomb about the 1st of May, testifies that he had received no wages and the other men, some of whom had been working longer than himself, had not been paid (fol. 228). The original outfit, according to the testimony of Acheson, included provisions enough to last about thirty or forty days for three or four men (fol. 65) and they were working five men on the Smuggler Two (fol. 377), so that aside from the original outfit, there appears to have been little or nothing furnished by the parties of the second part up to this time (fol. 375). Seaver was sick with mountain fever and Dunscomb went out to take him and to raise money and provisions for the purpose of paying the debts and prosecuting the work. He promised to return in about ten days with provisions and money (fol. 335). He took with him all the pack animals consisting of four horses and four or five burros. One of the horses belonged to Johnston. They also took one of the men, Josh Dustan, who had charge of the animals. Dunscomb and Seaver did not return, but in the course of two or three weeks, Dustan came back with two or three of the animals and a small lot of provisions (fol. 336). The other animals were sold or disposed of by Dunscomb at Buena Vista (fol. 229). Shortly after and early in July, Mr. Acheson came in and paid Johnston $75 or $80 on account, which was distributed among the men (fol. 364, 338, 334, 339). At that time, according to Acheson, there were three men working in the Smuggler Two besides Johnston. Johnston had been obliged to purchase provisions upon his own credit in town

and these bills for labor and supplies were unpaid. Johnston had received no wages and had received nothing on account of the Rouze interest (fol. 342). Mr. Acheson testified that all the debts were paid at this time, but when asked who paid them he stated that they were paid by the firm of Acheson, Seaver and Dunscomb (fol. 78) and would not say that he paid anything personally and the other members of the firm were absent. He told Johnston at the time that he had brought in money to pay off the men and the debts of the mine, but that he had had bad luck the night before, and lost most of it in a game of cards, down town (fol. 239). He remained only for a day, and went out for the avowed purpose of raising money, promising to return in a short time. On the 6th day of July he made a sale to Mr. Ed. Browne of a one-sixteenth interest in the Smuggler Two (fol. 521). Mr. Browne, a witness for defendant testifies that he paid Acheson and his partner $538 in cash for this interest, besides giving him (Acheson) certain credits upon an indebtedness that Acheson owed him, and Mr. Browne is quite positive that Acheson told him that this $538 was just enough to pay the indebtedness at that time, and agreed to apply the money in satisfaction of the debts (fols. 109, 110). Mr. Dunscomb, also a witness for defendant, testifies that the amount received from Browne lacked $300 of being sufficient to pay the debts, and that, to raise this amount, he and Acheson signed a note, which he (Dunscomb) afterwards had to pay (fol. 176). Dunscomb further states that the money so raised was sent over to Johnston by Dustan, but in this he

is undoubtedly mistaken. Dustan says he did not bring any money, and there is no reason to discredit his statement. (fol. 230). Johnston, and several of the workmen (White and Dunstan), have testified that they received no money from Acheson, except the $75 or $80 above mentioned, and Dunscomb admits that after he and Seaver went out, there was a bill run for provisions amounting to several hundred dollars, which was not paid until the fall of 1880, together with another bill (fol. 164).

In this connection it should be noted that the contract did not contemplate sales of fractional interests. It provided that "*where a claim is sold*, the proceeds of such sale are TO BE DIVIDED BETWEEN THE PARTIES of the first and second parts, after re-imbursing the parties of the second part for all moneys expended on the claim, and paying to the parties of the first part $200, if sale amounts to enough, *except as to Little Pearl* (this was the Smuggler Two), in which case the party of the first part (Johnston) is to receive $1,500 instead of $200, as in other sales, on the same conditions as above." In the sale to Browne, and in subsequent sales by Acheson and Seaver of other interests in the Smuggler Two and J. C. Johnston claims, this provision of the contract was ignored and violated, for Johnston got no part of the proceeds.

Johnston continued to work the mine for nearly a month longer, upon his own credit and responsibility (fols. 241, 386, 387, 388). He wrote a number of letters to Dunscomb (fols. 175, 176, 238), calling for assistance and asking him why he did not return with provisions and means to carry on

the development, but without avail. By this time the debts amounted to about $1,000, and Johnston's resources and his credit were exhausted (fols. 264, 334, 339). Mr. White, who was one of the laborers, testifies that no portion of his wages, which amounted to $150, had been paid. He testifies that he was a new man, and that there were four or five other men, some of whom had been working longer than himself, and that they had not been paid (fol. 364).

Seaver testified that his partner, Acheson, notified him from Leadville that Crittenden and Adair had agreed to deed the property back to him on payment of the expenses they had been to up to that time, *amounting to something over $500*, and Seaver says that these expenses had been contracted after he and Dunscomb left (fol. 696); and see Millar's testimony (fol. 262).

They owed Crittenden $300 for provisions. Something had to be done, and in this state of things, G. A. Crittenden and one J. W. Adair agreed with Johnston that if he would make a new location and take them in as locators for a half interest, they would assume and pay the debts of the mine (fols. 339, 387), and pay Johnston $2,000, besides $100 a month for superintending the work. They also agreed to re-imburse Johnston's former partners for their expenditures.

Johnston accepted this offer as the only means of relieving himself of his difficulties, and thereupon the J. C. Johnston claim was located on the 4th day of August, 1880, by the complainant claiming a half interest, and by Messrs. George A. Crittenden and J. W. Adair claiming the other half.

Immediately after the location of the Johnston claim, complainant and his co-locators went to Leadville for the purpose of getting money to consummate the agreement just made. Two of the workmen, White and Kelly, went with them to get their wages (see their testimony). Before the new arrangement had been consummated at Leadville, Mr. Acheson appeared there. It seems that he and Dunscomb had heard of the new location and had gone to Aspen to see about it. They drove over in a spring wagon from Buena Vista. Acheson says they went for the purpose of paying off the debt, and brought in money for that purpose, and that they knew nothing about the new location until after their arrival at Aspen (fol. 69), but Dunscomb states that he heard there was something wrong, and told Acheson they must go over there, and Seaver testifies that he heard the mine had been jumped, and that he notified Acheson (fols. 161, 691). Dunscomb remained at Aspen while Acheson went to Leadville, where he found Johnston and Crittenden and Adair. After some negotiations, he settled with Crittenden and Adair and took a deed of all their interest in the Johnston as well as in the Smuggler Two, paying them therefor a thousand dollars, according to the recital in the deed. Acheson says this was not the actual consideration paid, but that he re-imbursed Crittenden and Adair for the moneys which they had expended, and gave them about $50 to cover their expenses. As yet Crittenden and Adair had paid only a portion of the debts and assumed the balance, which was a fortunate circumstance for Mr. Acheson, who appears to have been short of

money. Acheson testified that he paid Crittenden and Adair in cash (fol. 85), but it appears from the testimony of O'Connell, the Deputy Sheriff, and from the Justice's docket (fol. 652) that Acheson gave his check to Crittenden for $300, in part payment, which was dishonored at the bank, and for which Acheson was afterward arrested on the charge of false pretenses, made by Crittenden (fol. 391).

The probability is that this was the $300 which Dunscomb and Acheson raised on their joint note, which Dunscomb says he afterwards had to pay, and that Dunscomb is a little mixed in his dates.

Acheson also paid White $100, on account of his wages, leaving a balance of $50, which has not been paid yet. White testifies that Acheson tried to avoid paying him anything, but was finally made to give up this $100, and promised the balance within a few days (fol. 363).

Concerning the negotiations between Acheson and Johnston, at this time, there is a conflict of testimony. Johnston states (fol. 341, 353, 244) that he agreed to deed back to Acheson and his partners the additional forth interest which he had taken in the new location, if they would pay the debts and pay him the sum of $525, which was the amount of his wages from the last of April, including the amount due on the Rouze interest, and as expenses for going to Leadville and down to Littleton, where he lived; that Acheson agreed to this, but had not the money to pay (fols. 331, 341, 342). This is corroborated by White (fol. 365). He paid him, however, $25 on account (this is admitted by Acheson, fol. 71), and agreed to pay him the bal-

ance of $500 within a few days, just as he had agreed with White. White and Johnston both lived at Littleton, and both went there immediately after the supposed settlement. Mr. White, who was present at this transaction, and who is a disinterested and apparently a very careful witness, corroborates Mr. Johnston's testimony in these particulars (fols. 362, 365, 366). Acheson was to go to Littleton himself with the money (fol. 242), and White says that he and Johnston used to watch the trains at Littleton for Acheson. Johnston received a letter from Acheson (fol. 382), stating that he would be there with the money, but he never came. Johnston also states that Acheson had prepared a deed for him (Johnston) to sign, but he refused to sign it until he got his money. It was understood that when the money was paid Johnston would go to work again under the old agreement (fol. 244).

Not only does Acheson deny all of this, but he states that he distinctly informed Johnston that he had forfeited all right to any interest in the property, but by his grace he would allow him the original fourth interest to which he was entitled under the grub stake. He further states that Johnston surrendered to him the location certificate of the J. C. Johnston, with the remark that that ended the Johnston location, or words to that effect. In his first deposition, Acheson states this as his impression, and is not positive about it (fols. 71, 74), but in his second deposition he is shown a certificate which he identifies as the very location certificate which Johnston surrendered to him (fol. 221). He says

he afterwards turned over the certificate to his attorneys, Messrs. Taylor & Ashton (fol. 222), and then Mr. Sayer comes on the stand (fol. 152) and says he found this same certificate last June (1888) in a pigeon-hole in the office of Messrs. Taylor & Ashton, in Leadville.

He states that neither Mr. Taylor nor Mr. Ashton were in the office at the time, but that the clerk was there, and that he and the clerk made a search together, and found this certificate, as above stated. Mr. Ed. Browne identifies the certificate as having been shown him by Mr. Acheson, in December, 1880 (fol. 107), which was the time they heard of the revival of the J. C. Johnston location, so he states. When asked if there was anything peculiar about this certificate which enabled him to distinguish it from the other which was recorded, he said "Yes; that in this certificate Johnston was spelled with a 't,' but that in the other the 't' was dropped" (fol. 111), which, unfortunately for Mr. Browne's testimony, is not the fact (fols. 211, 439). The probability is that the paper which was exhibited by Mr. Acheson to Mr. Browne, as evidence of the abandonment of the J. C. Johnston claim, was the deed from Crittenden and Adair to Acheson, and that Mr. Browne is simply mistaken in stating it was the location certificate.

Now, we happen to have a piece of documentary evidence in this case, which tests pretty conclusively the truth of Mr. Acheson's story concerning the surrender of this certificate and the abandonment of the J. C. Johnston claim by Johnston. It is the deed from Crittenden and Adair to Acheson (fol. 515), drawn by Acheson himself on

the 10th of August, 1880 (fols. 70, 243, 656), the same day on which he says complainant surrendered the original certificate, and thereby abandoned the J. C. Johnston claim.

This deed describes the claim by metes and bounds, and Acheson had the location certificate before him when he drew the deed. But, strangely enough, the description in the deed does not correspond with the certificate which they now produce as the very certificate which Johnston surrendered to Acheson (fol. 221). It varies from it by fifteen degrees in each course, and the witness, bearings and ties are all different. It does correspond, however, with the other certificate which Johnston kept, and which was afterwards recorded (fol. 439), but which the defendants say was fraudulently made, after Johnston's interview with Acheson, which, of course, was impossible. Johnston states that the second certificate was made to correct a supposed error in the first, which did not correctly describe the claim (fol. 243), and, as a matter of fact, the first certificate was never signed by one of the locators. It further appears that Acheson's attorneys, Messrs. Taylor & Ashton, in describing the J. C. Johnston claim in the bill of complaint which they subsequently drew for Acheson and his associates, adopt the description given in the second certificate, instead of the other, notwithstanding the fact, if it was a fact, that they had received from Acheson the so-called original certificate (fol. 465).

This documentary evidence not only overthrows the testimony of Acheson, but it corroborates the testimony of Johnston and White as

to the transaction at Leadville. Johnston afterwards delivered the certificate to Chatfield at the same time that he executed the title bond to Chatfield, September 14, 1880, and both of these instruments were filed for record on the same day, viz., September 21, 1880. How Acheson came by this old discarded certificate, if he ever had it, we do not venture to say, but he did not get it from Johnston. It may have been among the papers which Johnston turned over to Chatfield and Thomson and Sayer (fol. 243), for he gave them all his title papers and he may have neglected to destroy this, or Crittenden may have retained it and may have given it to Acheson, or Browne, or Chatfield.

Acheson says that after the settlement with Crittenden and Adair he sold an interest in two Leadville properties (fol. 73). Seaver also testifies to this and that he was interested in the Leadville property with Acheson (fol. 698). Thereupon Acheson went from Leadville back to Aspen (fol. 242) for the purpose of paying off again, but unfortunately he got into another poker game and lost all his money and had to borrow $90 to get out of town. This is proven by the evidence of Millar, Lou Johnston and Dustan (fol. 255, 267, 277, 278, 232, 233) and Dunscomb (fol. 189). The result was that the men went without their pay and all the bills remained unpaid until late in the fall, when they were paid by Duncsomb and Chatfield and their associates in The Fulton Mining Company. *Acheson directed Millar, who was the foreman, not to destroy the Johnston location stakes and notices, and stated that upon the advice of his attorney, Judge*

Pendery, he intended to preserve the Johnston location, and accordingly the J. C. Johnston claim was preserved (fol. 260).

Upon this review of the evidence upon this branch of the case, we claim,

1. That at the time of the J. C. Johnston location there had been a substantial failure upon the part of Johnston's partners, in the grub-stake contract, to perform their part of the agreement, and Johnston had a right to treat this as an abandonment upon their part of the Smuggler Two claim.

Murley vs. Ennis; 2 Colo., p. 306.

2. That so far as the additional fourth interest was concerned which Johnston claimed in the new location, there had been a total failure of consideration on the part of his associates by their failure to pay any part of the $37.50 per month, which was the sole consideration for which they were to receive that interest, and that Johnston in re-locating that interest in his own name was simply reclaiming his original interest under the grub-stake contract.

In Murley vs. Ennis, *supra*, we quote the following from the opinion of the Court:

"If, by the understanding of the parties, Ennis and Thomson were to provide all supplies necessary to the prosecution of the work of development upon the lode, as the same might, from time to time be required, then *performance upon their part was a condition precedent to the obligation of Murley to perform; and their failure would, it would seem, authorize him to treat the whole adventure as abandoned. He might then lawfully desert the work and proceed about his other affairs; or, inasmuch as the*

default of Ennis and Thomson could not have the effect to compel him to abandon his right in the premises, he might, with equal propriety, proceed with and perfect the development of the lode upon his own account. And if he did so, plaintiff cannot be heard to insist upon any benefit under the contract, which he himself voluntarily abandoned. Whether plaintiff might lawfully claim in such case to be remunerated for what supplies were furnished under the contract, it will probably not be necessary to inquire, inasmuch as all the evidence tended to show that the defendant, before this action, had repaid all advances made, and the jury will probably accept or reject it in whole."

See. also—

Page *et al.* vs. Summers, 12 Pac. r. 120 Cal.

Which holds that where a prospecting partnership has been dissolved there is no implied duty upon any of the partners to go on and complete defective locations, and, having done so, they are not chargeable as trustees of the others.

In this connection we note that by the terms of the "grub-stake" contract, the parties of the second part bound themselves "to pay for all work done on the claims in *pushing developments* and where deemed best in working assessments."

And we also call attention to the testimony of Johnston to the effect that Crittenden and Adair had agreed to re-imburse his former partners for their expenditures (fol.).

3. That by the settlement with Crittenden and Adair, and the taking of their deed to the J. C. Johnston claim, and the agreement to settle

with Johnston for the additional fourth interest claimed by him in the new location, and to take his deed therefor, there was a recognition and adoption by Acheson of the new location as made by Johnston.

4. That the Johnston location was also recognized and adopted by Acheson, by his express direction to the foreman to preserve the location stakes and notices of the J. C. Johnston. This shows that there were serious doubts in the mind of Acheson himself, about the validity of the Smuggler Two location, which was prematurely made, no mineral vein having been discovered before the date of location. We are aware that it has been held by some of the lower Courts that such a location may be cured by a subsequent discovery of the vein, provided no intervening rights are thereby affected, but the general rule as laid down by this Court, is that a location made without right is absolutely void, and can only be cured by a new location.

Belk vs. Meagher, 104 U. S., 284.

Kendall vs. San Juan Silver M. Co., 12 S. C. R., 779.

This, apparently, was the advice which Judge Pendery gave to Acheson; and subsequently Messrs. Thomson and Sayer took the same position; Millar testifies in his emphatic way that "after going to Leadville we learned from Mr. Thomson and Mr. Sayer that where you do not locate on mineral you might sink 1,000 feet—no good; that shut me up" fol. 260).

5. That equity would not allow the claim of Acheson and his partners to an interest in the new

location, by virtue of their grub-stake contract, without first performing, or offering to perform, the condition and consideration on which that interest depended—a condition which to this day has never been performed.

Hence we claim that there was no *bona fide* controversy between the Smuggler Two and J. C. Johnston claimants, at the time of Johnston's sale to Chatfield.

While it may be admitted, as was strenuously urged by counsel for defendant, that a party cannot, as a general rule, by his own act divest his co-owners of an interest which has once legally vested, it will not be denied that such interests in possessory claims may be lost by abandonment or acquiescence in a new location, as was done in this case by Mr. Acheson. The whole difficulty at this juncture of the case obviously was that the money which Acheson had raised for the purpose of paying off his obligation to Johnston and discharging the debts of the mine, thereby acquiring or extinguishing, as he pleased, the Johnston title, was lost at the gaming table. And, gambler like, after having deprived himself of the means of carrying out his agreement with Johnston, he denies that there was any such agreement—swears that he paid him and paid all the debts and then tries to go back to the old location. This accounts for his sale to Holden of an interest in the Smuggler Two about a month later (fol. 659), still trying to raise money to pay the debts (fol. (664, 700), and then gambling it away, for the debts were not fully paid until the Christmas holidays following (fol. 255), when they were

paid, not by Acheson, but by the Fulton Mining Company or some of its officers, and in the meantime some of the men had brought suits for their wages (fol. 231). Mr. Holden testifies that at the time of his purchase of this interest, the definite understanding was that out of that money ($1,000) they (Acheson and Seaver) should pay off every debt then owing against the mine (fol. 666), and that he took a written agreement from them to that effect (fol. 664). Seaver testified that after the payment of some personal expenses Acheson took the balance of the money received from Holden and went to Aspen to pay the debts, etc., (fol. 699). Mr. Holden also testified that at the time of this purchase he had heard nothing whatever about the J. C. Johnston claim. Perhaps not, yet the location stakes of the J. C. Johnston were on the ground by direction of Acheson (fol. 260), and he, Holden, says he visited the Smuggler Two claim, which covered the same ground; and the location certificate of the J. C. Johnston had been recorded. As to subsequent purchases, Mr. Holden does not claim that he was ignorant of the Johnston location. Indeed, he was purchasing this title as well as the Smuggler Two.

At or about the time of the settlement between Acheson and Crittenden and Adair, and of the agreement to settle with Johnston on the 10th of August, 1880, Mr. Chatfield was negotiating for the purchase of an interest from Johnston in this same property (fols. 424, 345 and 381). At first Johnston refused to sell him an interest for the reason that he had agreed to sell to Acheson, and he did not want to part with more than half his interest (fol.

382). Mr. Chatfield had consulted Mr. Sayer about the title, showing him a memorandum thereof (fol. 424), and Mr. Sayer testifies that he and Chatfield called on Johnston at the Windsor Hotel in Leadville at this time and talked about the matter, but nothing was done. After about a month had elapsed and Johnston became satisfied that Acheson did not intend to carry out his agreement, he executed a title bond to Chatfield in which he agreed to sell a fourth interest in the Johnston, together with other interests, including half his interest in the Kansas City (now Chatfield lode) and half his interest in the Smuggler Two.

This brings us up to the transaction between Chatfield and Johnston and the interview with Thomson and Sayer at Leadville on the 12th day of October, 1880, with which we set out in the argument.

What occurred at that interview appears from the testimony of Johnston which stands uncontradicted and unimpeached. He was not even cross-examined by counsel for defendant on this branch of the case. We quote from his testimony, beginning at fol. 328:

Q. Now state fully and in detail all the circumstances under which you executed this (contract) and the deed to Chatfield and this agreement with Chatfield and the title bond which has just been introduced in evidence? A. Well, the way to get at that properly would be to commence at the sale to Chatfield.

Q. Commence with that first? A. I sold Mr. Chatfield an undivided one-fourth interest in the J. C. Johnston location for $1,200 and gave him a

bond for a deed and he paid me $100 down and was to pay the balance in monthly installments. I was to take a team which was in Leadville, and I went out afterwards for the team, and he brought the mares down to Leadville, and when they came to deliver me up the team he said that he could not, and would not pay me any more of the money until I perfected the title; that there was a suit commenced or about to be commenced, against the Johnston by the Smuggler people.

Q. Who were the Smuggler people? A. Dunscomb, Acheson and Seaver. So I finally agreed with him he was to pay me this team and I was to go for them, and after I got the team the balance was to be paid in monthly installments of $100 a month, and the team was to be taken at $350. After I got up to Leadville Mr. Chatfield brought the horses down and commenced to talk about the matter, and he said that he would not let me have the stock or pay me anything unless I feed some attorney to fight the case.

Q. In that conversation what did he say about a law suit—that is, did he refer to a suit then pending or a suit that was threatened? A. He told me that there was a suit brought then—that there was a suit then brought.

Q. Did he describe the nature of that suit and the parties to it? A. Why, of course; yes sir. He told me that Dunscomb, Acheson and Seaver were the parties, the original locators of this mine, the Smuggler Two, were the parties that had brought the suit—and unless I would fee attorneys to defend this title that he could not pay me and

would not pay me any more money. I told him I was willing to do whatever was right.

Q. Did you have any conversation with Chatfield with reference to the merits of the Smuggler No. Two claim as against the J. C. Johnston location? A. I explained that to him when I made the sale to him—I explained the location when I made the sale. I can't remember that we had any conversation about the locations at this particular time, but I think we did. I think the matter was all talked over there at the time I made the sale to him. At the time the deed was made, the whole matter was explained to him, and I told him about the location of the Smuggler Two, and the location of the Johnston.

Q. When was that? A. It was some time in the fall of 1880. * * * (Fol. 330.)

Q. Who was present at Leadville when you executed the deed? A. Mr. Thomson, Mr. Sayer and Mr. Chatfield. Then the matter was all talked over.

Q. How did Thomson and Sayer come to be present? A. Mr. Chatfield proposed to me. I told him I was willing to do whatever was right, and he said he knew where he could get as good a lawyer as any in the State, and I asked him who it was, and he said Mr. Thomson and Mr. Sayer, and we went down there after dinner. This matter was all talked over. They asked me $500 in cash to defend these suits, or this suit, or they would take a one-eighth interest in the mine. Of course, I didn't have any money, and I told them I would give one-eighth interest in the mine for defending the suit, provided Chatfield would pay the ex-

penses of the suit—at least I was not to pay out any money, and I was to give them one-eighth interest, and we agreed upon that, and I was to deed it over to Chatfield, which I did.

Q. Did you have any reason to expect a suit or claim of that kind besides what Chatfield told you? A. No, sir, I did not; but from what Chatfield told me I supposed there would be a suit. * * * (Fol. 344.)

Q. Now did you communicate to Chatfield and to Thomson and Sayer the facts that you have related here in regard to the location of the Smuggler No. Two and the subsequent location of the J. C. Johnston and your relation to your former partners, Dunscomb, Acheson and Seaver? A. I told them all about it, and, in fact, they seemed to know all about it already. I told them all about the whole proceedings, and how I located it originally, and how I located it the second time, and told Chatfield and Thomson and Sayer everything about it.

Q. Did you tell them of the transaction in August between you and Acheson, and between Acheson, Crittenden and Adair? A. Yes, sir; and Mr. Chatfield said he could get the other half interest out of Crittenden and Adair, and I told him they had deeded it to Acheson. "Well," he says, "that won't matter, I can get the title and have it put on record—they haven't had their deed recorded yet; I can get them to deed it to me and get my deed on record ahead of theirs."

Q. Did you, at the time of signing this contract with Chatfield, expect any lawsuit from a claimant (the claimants) of the Smuggler Two? A.

Yes, sir; I expected a suit then certainly—in fact, I thought there was a suit commenced. I was under that impression from the talk with Thomson and Sayer and Chatfield, and from what they told me. I know that Thomson told me I had got into a suit and that I had got in with a set of damn thieves; that he was well acquainted with them.

Q. But your expectations in that regard were because of what was told you by Thomson and Sayer and Chatfield? A. Yes, sir; I hadn't seen any notice of suit or had any notice of a suit served on me.

As a result of this interview, complainant executed a deed to Chatfield (fol. 441) conveying his entire interest in the J. C. Johnston mine for a stated consideration of $1,200, and a deed to Thomson and Sayer of all his interest in the Smuggler Two (fol. 507), and the following contract drawn by Mr. Sayer (Exhibit D, fol. 441) was executed by Chatfield and Johnston:

MEMORANDUM of an agreement made and entered into this 12th day of October, A. D. 1880, by and between I. W. Chatfield, of the City of Leadville, County of Lake, and State of Colorado, party of the first part, and J. C. Johnston, of the same place, party of the second part, WITNESSETH:

The party of the first part for and in consideration of the sum of one dollar to him in hand paid, and for other good and valuable considerations to him moving from the party of the second part, doth hereby covenant and agree to and with the said party of the second part, that in the event of the party of the first part prevailing and succeeding

in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part, against persons who claim adversely to him *an interest* in the following described property, to wit: The lode, lead and mineral deposit known as and called the J. C. Johnston lode, situate lying and being in the Roaring Forks Mining District, Gunnison County, State of Colorado. That the party of the first part upon so acquiring the title, legal and equitable, to the said mine by means of the legal proceedings so about to be commenced, doth hereby covenant and agree to and with the said party of the second part to convey to the said party of the second part an undivided one-eighth (1-8) interest in and to the said above described lode, which shall be free and clear from all expense incidental to the litigation incident to said contemplated suit.

And the party of the second part for and in consideration of the covenants and agreements to be kept and performed as hereinbefore mentioned, doth covenant and agree to and with the party of the first part upon having or receiving the title to an undivided one-eighth (1-8) interest in and to the said lode, to pay an undivided one-eighth (1-8) part of the expenses which shall accrue in the development and opening the said above described lode.

In witness whereof the parties hereto have hereunto subscribed their names and affixed their seals on the day and date first herein above written.

(Signed) ISAAC W. CHATFIELD, [L. S.]
(Signed) JOHN C. JOHNSTON. [L. S.]

STATE OF COLORADO, }
COUNTY OF LAKE, } ss.

I, Daniel Sayer, a Notary Public in and for said County in the State aforesaid, do hereby certify that Isaac W. Chatfield and John C. Johnston personally known to me to be the persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed and delivered the same as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of October, A. D., 1880.

Notary Public.

Three days later Chatfield executed a quit claim deed conveying to Thomson and Sayer an undivided one-eighth interest in the J. C. Johnston lode, for a stated consideration of $500 (fol. 150).

It is admitted that no money consideration was paid by Thomson and Sayer for this conveyance (fol 148), and Mr. Chatfield has testified that the actual consideration for the deed to Thomson and Sayer was the legal services that they were to perform in and about the "legal proceedings" mentioned in the contract, and *he further testified that those services were never performed by Thomson and Sayer* (fols. 144, 147).

In this connection we note a significant coincidence which appears in the evidence. Johnston testifies that Thomson and Sayer had demanded a fee of $500, and that, having no money, he agreed to give them an eighth in the property.

as a contingent fee for their services in the litigation.

At the time of giving this testimony, Johnston was wholly ignorant of the deed from Chatfield to Thomson and Sayer, conveying an eighth interest in the Johnston lode (fols. 342, 357). The deed was never recorded, and never came to the surface until it was put in evidence in this case by Mr. Thomson, as a part of the deposition of Mr. Chatfield, and when Johnston testified he did not know of the existence of the deed, and of course could have known nothing of its contents.

Now, it is a significant fact that the expressed consideration of this deed is $500, the very amount of the fee demanded by Thomson and Sayer in the first place. The deed corroborates Johnston's testimony in this particular, and discredits the testimony to Chatfield and Sayer, to the effect that Thomson and Sayer were employed by Chatfield, and not by Johnston.

At the same time, to wit, on the 15th day of October, 1880, Thomson and Sayer made a deed to W. J. Wilson of all their interest in the Smuggler Two, except as to one-eighth, which was reserved in the deed (fol. 504).

We claim that the contract above shown, and the deed from Chatfield to Thomson and Sayer, and other conveyances, when read in the light of the surrounding circumstances, and of prior events and the record titles of the Smuggler Two (fol. 546) and J. C. Johnston mines (fol. 536), are conclusive evidence of the following propositions:

1. That the interest purchased by Chatfield in the J. C. Johnston Mine was a fourth interest,

and that the remaining fourth of Johnston's interest in the property which he deeded to Chatfield was in trust.

2. That this fourth interest was the interest referred to in the contract as being claimed adversely to Chatfield by certain persons.

3. That the defendants, Thomson and Sayer, were employed to institute the "legal proceedings" mentioned in the contract and were to receive as a contingent fee for their services in that behalf an eighth of the Johnston Mine, in case those proceedings were successful.

4. That in such case Johnston was to receive the remaining one-eighth of this contested one-fourth.

5. That the "legal proceedings" mentioned contemplated and included an application for letters patent and the acquisition of the Government title, as well as a suit of some kind.

At that time there was but one interest and but one person or party of persons who claimed or could claim an interest adversely to Chatfield. The *adverse interest*, if there was any, was an undivided one-fourth which Johnston had located in the J. C. Johnston, in addition to one-fourth to which he was entitled under the grub-stake contract, and which he previously owned in the Smuggler Two.

Nobody was contesting or could contest Johnston's right to one-fourth of the property, whether it was called the Johnston or the Smuggler Two, and Chatfield's title to one-fourth was secure because he held both titles—the J. C. Johnston by deed from complainant to Chatfield directly, and the Smuggler Two by deed from complainant to

Thomson and Sayer in trust to secure Chatfield and Wilson, who was interested with Chatfield, in case the Smuggler Two should prevail over the J. C. Johnston.

The parties who claimed adversely to Chatfield an INTEREST IN THE JOHNSTON, if there were any, were, of course, Acheson and his partners in the grub-stake contract, Dunscomb and Seaver.

Now, if Chatfield had *purchased* this one-fourth interest, he certainly would not have agreed to convey back one-half of it to Johnston and to deed the other half to Thomson and Sayer for no consideration to himself, and yet that is just what he did do. On the other hand, if he took it in trust, the contract and the deed to Thomson and Sayer are easily explained and can only be explained in this manner.

Again, the consideration, $1,200, in the deed, corresponds with the consideration in the title bond and the title bond covered only one-fourth and not a half interest in the property. The purchase price recited in the bond was precisely the purchase price that was paid in the deed and was paid at the time and in the manner specified in the bond (Chatfield testifies to this, fol. 128). Why then should complainant have sold one-half for $1,200, when the bond called for one-fourth for the same consideration? Was it because there were other interests covered by the title bond, which were not embraced in the deed? Chatfield says he did not consider the other properties of any value and they were dropped because he did not want them (fols. 127, 139, 367). But he afterwards relocated the Kansas City as the Chatfield lode,

alleging discovery on the 14th day of June, 1880, prior to the time of his bonding an interest in the same property from Johnston (fol. 491).

It seems that he preferred "jumping" all of the "Kansas City" claim to taking a deed of one-eighth of it, even though the deed would cost him nothing (fol. 433, 434); but why should Johnston sell one-half of the Johnston lode for the price of one-fourth, as fixed br the bond? What had happened to make the property worth fifty per cent less on the 12th day of October, when the deed was made, than it was on the 14th day of September, a month before, when the bond was executed? Is there any evidence that a new bargain was made by the parties as to the purchase of this one-fourth? Not a particle. But there is evidence to the contrary (fol. 367).

There is another feature of this contract, which, in connection with the parol evidence, brings us to the same conclusion. We refer to the part that was erased upon Johnston's objecting to it and his refusal to sign the contract with this provision in it (fols. 358, 398, 126). This part is as follows: "And it is mutually agreed that at the time of the ensealing and delivery of these presents that all the title that appears of record in the name of J. C. Johnston or John C. Johnston is already vested in the said J. W. Chatfield, and that the suit about to be brought by said Chatfield is for the recovery of a portion of the lode which does not appear of record in the name of said Johnston." Whatever else this extraordinary provision might have meant in the mind of its author, Johnston's refusal to accept it clearly shows that he did not admit or

agree that all of the title which appeared of record in his name was now vested in Chatfield, in the sense of absolute ownership, and that he did not agree that the suit to be brought by Chatfield was for the recovery of an interest which did not appear of record in his (Johnston's) name. What, then, is the necessary inference? Why, that the suit to be brought by Chatfield concerned an interest which appeared of record in the name of Johnston; in other words, which concerned the additional fourth interest which he had located in the Johnston, as contended by complainant.

Fortunately it is not necessary for us to determine just what Mr. Sayer meant when he wrote this portion of the contract. It appears from the complainant's testimony that several times during this transaction the parties went down stairs and partook of refreshments (fol. 245). Johnston states that he could not say what the others drank, but that he and Sayer drank whisky. Fortunately for the complainant, he was sober enough to see that if he signed the contract with this provision in it, he would have nothing left, and he therefore refused to sign it.

Of course the interest in the Johnston lode which did not appear of record in Johnston was the interest of Acheson and his partners under the deed from Crittenden and Adair to Acheson, about which there could be no controversy, and hence there could have been no *bona fide* intention to bring a suit for the recovery of that interest.

There is but one other way in which to account for this remarkable provision written by Mr. Sayer, and that is, that it refers to a scheme afterwards

carried out of getting another deed from Crittenden and Adair which of course would bring on a suit with Acheson and his partners.

Johnston did understand that there was to be an application for patent, and that he was not to receive his interest back until the title had been perfected in that manner (fol. 346). He says that Chatfield told him that he could get the other half interest from Crittenden and Adair (fol. 345, 355). "But," said Johnston, "they have already deeded their interest to Acheson." "That makes no difference," Chatfield replied, "the deed is not on record, and I can get a deed and put it on record ahead of theirs." Johnston says that they also talked about whether the other parties, Acheson, Sayer and Dunscomb, would join with Chatfield in an application for patent (fol. 355). Of course they would not join so long as there was a controversy between them as to the interests owned in the Johnston; but Johnston supposed that that controversy would first be disposed of, and then, of course, there would be no obstacle in the way of an application for a patent by the several owners of the Johnston.

What is the defendant's version of this matter?

It is a most extraordinary one. Whether we consider the evidence of their witnesses, meager as it is, or whether we consider the answer which they have filed (fol. 43). The answer is not only unsupported by the evidence, but is flatly contradicted by their own witnesses upon several important points. "What the answer weaves the evidence ravels." They all agree in this respect, however, that Johnston sold to Chatfield his entire

interest in the mine (fols. 125, 46, 130), and that Johnston's interest in the contract depended upon Chatfield acquiring the entire title (fols. 47, 139, 406); but Mr. Chatfield, when asked how he expected to acquire the entire title by any legal proceedings, when there was no controversy about one-half of it, which belonged to other parties, replied that "he didn't know exactly how they were going to win the thing" (fol. 134), and Mr. Sayer, on being asked what the controversy was about, stated that he understood from Chatfield that Crittenden and Adair (who had sold out) were setting up some claim of title, and that there would be a suit with them (fol 404); but Chatfield *testified* that *the property was supposed to be in litigation with Dunscomb, Seaver & Company* (fol. 129), and Johnston testified that it was represented by him that suit had already been brought by these parties (fol. 328).

Chatfield goes further and insists that he "purchased the entire mine" (fols. 130, 139). He says (fol. 135), "I got a deed from Mr. Johnston for the entire mine." "The deed included the entire mine, if I recollect right" (Id. fol. 139), and yet he testifies that he saw the location certificate (fols. 140, 246), which of course disclosed the fact that Johnston's interest in the location was one-half, and Sayer testifies that Chatfield had exhibited to him a memorandum of the title (fol. 416), and the deed itself conveys only the grantor's interest in the mine, and refers to the location certificate for a more particular description (fol. 444).

The answer states (fol. 471) that Johnston's

one-eighth interest, under the contract, depended on two things, neither of which, unfortunately for the defendants, appears in the contract itself. *First*, that Chatfield should procure a deed from Crittenden and Adair of their interest, and, *second*, that he should prevail in the expected litigation with the Smuggler Two claimants, which would involve tne entire title.

The answer then goes on to justify the breach of the contract in a most extraordinary way. It states (fol. 46, 50) that Johnston had misrepresented the nature and the merits of the controversy between him and his former partners; that it was supposed by Chatfield and Thomson and Sayer, from the representations of Johnston, that the only controversy was as to which of the two claims, the J. C. Johnston or the Smuggler Two, was a valid location; that Johnston represented "that the Smuggler Two was not located upon a valid discovery, but that the J. C. Johnston was so located, and Johnston knew the witnesses to prove these facts, and that he could be of material assistance in procuring the necessary evidence to establish the Johnston title as against the Smuggler Two, and would do so if Chatfield would procure a deed from Crittenden and Adair, and would convey to Johnston an eighth interest in the property in case he prevailed in the 'expected litigation.'"

The answer further states (fols. 46, 47, 50) that Johnston concealed everything about the grub-stake contract and the confidential relations existing between him and his partners under that contract, and also concealed the fact that Crittenden and Adair had already conveyed their interest in the property

interest in the mine (fols. 125, 46, 130), and that Johnston's interest in the contract depended upon Chatfield acquiring the entire title (fols. 47, 139, 406); but Mr. Chatfield, when asked how he expected to acquire the entire title by any legal proceedings, when there was no controversy about one-half of it, which belonged to other parties, replied that "he didn't know exactly how they were going to win the thing" (fol. 134), and Mr. Sayer, on being asked what the controversy was about, stated that he understood from Chatfield that Crittenden and Adair (who had sold out) were setting up some claim of title, and that there would be a suit with them (fol 404); but Chatfield *testified* that *the property was supposed to be in litigation with Dunscomb, Seaver & Company* (fol. 129), and Johnston testified that it was represented by him that suit had already been brought by these parties (fol. 328).

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to Acheson; but Chatfield testified (fol. 126) that at the time of his purchase from Johnston, he, Johnston, told him that his partners, the "Smuggler Two folks," "*had not complied with the contract.*" (Fol. 140.) The answer states (fol. 50) that "afterwards and about the 1st day of December, A. D. 1880, said Chatfield was informed by the said Edward Dunscomb of the aforesaid contract between said complainant and said Acheson, Dunscomb and Seaver, and of the aforesaid facts concerning the location of said Smuggler and J. C. Johnston Mining Claims, and of the confidential relations existing between said complainant and said Acheson, Dunscomb and Seaver and his co-locators of said Smuggler Two Mining Claim, and that *this was the first time that said Chatfield had any knowledge or information of the existence of said contract or of the facts aforesaid or of the aforesaid relations between said complainant and the persons aforesaid;* that having ascertained that the statements so as aforesaid made by said Dunscomb were true, said Chatfield thereupon proceeded to and did *effect a settlement* with said Dunscomb, acting for and in behalf of himself and his said wife, Margaret Dunscomb, in pursuance of which a corporation was organized under the laws of the State of Colorado by said Chatfield, Dunscomb, William J. Wilson, Daniel Sayer and Charles I. Thomson, which said corporation was called the Fulton Mining Company and is the defendant herein of that name, the certificate of incorporation of which was filed in the office of the Secretary of State of the State of Colorado on the 11th day of December, A. D. 1880, and that the said settlement with said Dunscomb was the

first time that an incorporation in connection with said J. C. Johnston mining claim was ever mentioned, suggested, or contemplated by any person."

But the answer is careful not to state the terms of the settlement with Dunscomb and the other adverse claimants, and is careful not to state that the fourth interest which Johnston claimed had to be surrendered. It is unguarded enough, however, to admit in another place that after learning from Dunscomb the true condition of affairs, and Dunscomb knew of the former deed from Crittenden and Adair to Acheson (fol. 198), and the settlement with Dunscomb was on the basis of his supposed interest under that deed as hereafter shown, the defendants, Chatfield, Thomson and Sayer, Wilson *and Dunscomb*, composing the Fulton Mining Company, did procure a second deed from Crittenden and Adair, and thus attempted to capture by fraud the other half of the title. When asked about this transaction, as they all were, Dunscomb, Chatfield and Sayer (Mr. Thomson and Wilson have not testified), they professed to have not the slightest recollection about it (fols. 405, 197, 142 and 131), but Mr. Jim Millar, who participated in the same transaction, has told us all about it (fols. 258, 259). Moreover, the deed bears on its face sufficient evidence of fraud, for it contains the following recital by the grantors: "It is intended hereby to convey such interest *only* as we *now* have in said mining claim," and the consideration for the transfer as expressed in the deed is the trifling sum of $100.

Millar testified as follows (fol. 258):

Q. Do you know what deeds or conveyances the Fulton Mining Company took of the Johnston

property in order to get all the title? A. The first deed was signed by Crittenden and was not recorded. The next deed I suppose was recorded. I know Crittenden went out and acknowledged it before a notary public there in Leadville.

Q. You were present? A. I was standing right by.

Q. Who was it got the deed from him? A. Mr. Thomson was the man that asked for it.

Q. Who was it drawn for? A. I would not say.

Q. Do you know what Crittenden received for it? A. He didn't receive anything for it at that time; that I am dead sure of.

Q. Did Adair sign it too? A. No, he wasn't there, he was over here in Aspen. He was running the tunnel on the Late Acquisition.

Q. Who did Crittenden make his first deed to of the Johnson mine? A. Acheson.

Q. And the second deed to the Fulton Min- Company? A. I think so.

Q. What was the reason of it? A. Well, the first deed wasn't put on record and Dunscomb told me, coming up on the cars from Buena Vista, that he was going to make a deal with his brother-in-law and he said, "See here, Jim, you want to stand in on this and keep your mouth shut and don't tell any more than you know; and I am going to have my brother-in-law (Thomson) stand in and am going to have a deed and going to have a stock company of it," which they did, as near as I know. Said I, "All right," and the madam told me the same thing.

Q. That was Mrs. Dunscomb? A. Yes, sir.

Q. What was to become of Acheson's interest under his deed? A. I cannot answer that. I understand since that Acheson brought suit, or was going to, or something else. That part I don't know anything about.

* * * (Fol. 263.)

Q. I will ask you if you had anything to do with the deed from Crittenden and Adair to the Fulton Company? A. Yes.

Q. What was it? A. I did just what they told me to do.

Q. What was that? A. Walked up the street to have him sign it, and Wilson—that is, Billy Wilson, a cattle man, he was there, too.

Q. What did he have to do with it? A. Well, I suppose he was interested, but the way it came around was this: I, being acquainted with Crittenden, he was to sign it. Billy was there, and I think Mr. Thomson asked me to go up there. I met him close to the Texas House—I remember that well enough.

Q. Was Chatfield there? A. No, he wasn't there. He was up, I think, in Thomson & Sayers' office. He was there a little bit before.

Q. Did you receive anything for your services in the matter? A. No; I didn't ask for anything.

Q. Did Crittenden or Adair say anything about their having made a deed to Acheson? A. No, not that I remember of. I think Mr. Dunscomb spoke about the previous deed to Acheson wasn't recorded; that I know for a fact, *but this deed was made out a little different from the first one* (fol. 263).

On cross-examination by Mr. Thomson, this witness testified (fol. 269):

Q. About this deed that went to the Fulton Mining Company, do you know who drew it? A. Dan Sayer, I think, if I remember right.

Q. Did you see it drawn up? A. I was sitting in the room; I didn't pay any particular attention. I think it was Sayer.

Q. Who went to Crittenden to get him to sign it? A. Wilson and myself; that I am positive of.

Q. Who conducted negotiations with Crittenden, and got him to sign it? A. I did.

Q. Under whose orders? Orders of Mr. Wilson, Sayer and Thomson.

Q. Are you sure I had anything to say about it? A. I think you are the man who said, "Get Millar and he will strike Crittenden."

It is hardly worth while to comment further upon the defense which is set up in the answer. It is sufficient to say—

(1) That is wholly unsupported by the evidence.

(2) It is utterly incredible that Johnston, having nothing to gain by any misrepresentation, would have grossly misrepresented the nature of the supposed controversy between the Smuggler Two and J. C. Johnston claims, or would have concealed the fact of the prior conveyance from Crittenden and Adair to Acheson, when he knew perfectly well that these facts would be shown when it came to a suit, and that such suit was sure to be lost, so far as it might involve the half interest so fraudulently acquired.

Standing alone, the contract might admit of a double meaning and might admit of the interpretation the answer seeks to place upon it, but when read in the light of the record title and of the surrounding circumstances, it will not for a moment admit of any such interpretation, as we have seen. Perhaps it was intentionally made ambiguous, so that, in case the fraudulent scheme should fail, the claim might be set up that Johnston's right to the one-eighth interest depended upon the success of this scheme to acquire the whole title, and this is the very claim which is now made. It was drawn blindly enough, so that Johnston would not see the double meaning. Can a reasonable person suppose for a moment that, had he seen it, he would have consented to stake his interest upon the success of an admitted fraud?

What was done by Chatfield and grantees in pursuance of the trust?

The answer alleges that the first settlement was made with Dunscomb, and that, in pursuance of this settlement, the Fulton Mining Company was organized (fol. 50). Of the circumstances surrounding and leading up to the settlement with Dunscomb, we naturally have but little information. The only evidence which we have is found in the testimony of Dunscomb. On his direct examination by Mr. Thomson, he testified as follows (fol. 165):

Q. Doctor, when did you first hear that Mr. Johnston had made a deed of his interest in the Johnston to I. W. Chatfield? A. I learned that some time in October or November, 1880.

Q. Do you remember how you learned it?

A. It was through some Kansas City source. I came down to Denver, and had just heard about it, and met you (meaning Mr. Thomson) at the Windsor Hotel, and I thought you were the party, at that time, who was trying to do me up in that property, as we were not very good friends, and hadn't been for some time, and I said to you at the Windsor, "I understand that Johnston has made a deed to Chatfield for the full interest that he has in that property. I don't care how much he deeds what belongs to him, but he can't deed more than belongs to him, and I understand you are trying to help him out."

Q. Will you state how it came a settlement was made? A. You didn't seem to care to say much about it, and you said, "If you will come up to Leadville we may be able to fix or arrange this matter."

Q. Did you come up to Leadville? A. I did.

Q. When? A. In December, 1880, I think.

Q. What took place there, Dr.? A. Well, I came and saw you at your office and you said you would see Wilson and Chatfield, and we talked the thing over and arranged things satisfactory so I could get my interest, and I said at the time Mr. Seaver was indebted to me from our old partnership, and I thought I ought to have a little more of the stock of the company when we formed it than Seaver did.

Q. Who suggested the forming of a company; how did that come about? A. I think I suggested the formation of a company. I said I thought we could work the thing better in the form of a company than any other way, and suggested

we have the thing surveyed and make an application for a patent, which was done.

Q. I will ask you what, if any, papers you laid before me, showing the facts with regard to the location of the Smuggler Two and your relations with J. C. Johnston? Now, did you inform Chatfield, Wilson and the rest us? A. I furnished you the whole business; how I came here and my relations to Mr. Johnston, and I don't know that I showed you any papers, except possibly some letters I had from Johnston. I think the location certificate was sent to Gunnison. I don't know that I had it in my possession at that time. I know we had that recorded. I presume the location certificate will show for itself."

Immediately after the organization of the Fulton Mining Company, Mr. Chatfield conveyed all his interest in the Johnston to the company and at or about the same time the deed was procured from Crittenden and Adair to the Fulton Mining Company (fols. 568, 492, 495, 509, 512).

The purpose of the incorporators of this company is further shown by the first issue of stock, which was as follows, the capital stock being 100,000 shares (fol. 575): To Chatfield, 12,500; to Wilson, 12,500; to Dunscomb, 14,583⅓; to Thomson & Sayer, 6,250; total, 45,833⅓. This stock was issued in pursuance of a resolution to the effect that 50,000 shares of the stock of the company should be issued to the members of the company, "according to their respective interests," and it appears from the testimony of Dunscomb (fol. 191) that the remaining 50,000 shares were to be left in the treasury as a "contingent fund," to settle any

adverse claims against the property, and, after the settlement of these claims, if there were any, the balance of the stock should be divided up amongst the original shareholders, according to their several interests. This explains the statement found in the answer that it was "in pursuance" of the settlement with Dunscomb, that the Fulton Mining Company was organized (fol. 50). It further appears from this issue of stock that the several stockholders, excepting Thomson and Sayer, received an amount of stock which represented their own proper interest in the Johnston lode at that time (that is, assuming that Dunscomb owned a third interest with his former partners, Acheson and Seaver, in the outstanding title, under the first deed from Crittenden and Adair to Acheson). Dunscomb's interest was evidently calculated as follows: His interest in the Johnston, under the first deed from Crittenden and Adair, was a third of a half, or one-sixth less his share of a former conveyance to Browne, which was a forty-eighth (fol. 521), leaving seven forty-eighths; and seven forty-eighths of 100,000 shares is 14,583⅓, which was the number of shares Dunscomb received. Wilson and Chatfield received one-fourth of the stock, which represented their proper interest under the deed from Johnston to Chatfield. Thomson and Sayer received 6,250 shares, representing one-half of their fee, or one-sixteenth of the stock, though as yet they had performed no service for Johnston. It is claimed, however, that they were employed by Chatfield, and this may be true, but the fee which he paid them, viz., an eighth interest in the Johnston lode, came from Johnston, and, as we have

seen, was to pay for services which would benefit Johnston only and not Chatfield, so far as the legal proceedings undertaken were concerned. The balance of the stock was left in the treasury to await developments.

The organization of this company had another purpose, which was to divide, and, so far as possible hide, the responsibility of the fraudulent acquirement of the half interest from Crittenden and Adair. This fraudulent work thus successfully commenced, was to be consummated by an application for patent, which was immediately made, as appears by the record book of the company (fol. 574). Acheson and Seaver, who, with Dunscomb, were the rightful owners of this interest, lived in Kansas City, and had returned there for the winter, and there did not seem to be so much danger of an adverse claim and suit at that season of the year, with the adverse claimants at a safe distance. The question arises here, how was the Fulton Mining Company able to show a clear title in the proofs which had to be furnished with the application for patent? The deed from Crittenden and Adair to Acheson had been recorded some time prior to the application, and must have been suppressed in some manner, or else the abstract of title was not brought down to the date of application.

It now appears how it happened that Mr. Chatfield was so urgent in his demand upon Johnston to make over his entire interest in the Johnston Mine to him. It was in furtherance of the scheme to acquire the entire title, which could only be done by Chatfield and his associates in some

manner getting the legal title in their names before making application for patent which, if not adversed, would cut off all claims. But the other owners hear about it, Crittenden tells them (fols. 107, 661, 74) though he says nothing about his own rascality in making the second deed. In fact he denied having made it, so Browne testified (fol. 513). Acheson records his deed from Crittenden and Adair (fol. 515). Seaver comes out to Colorado and hunts up Dunscomb, and thereupon Dunscomb, as President of the Fulton Company, effects a settlement with him in the following manner (fol. 707): he tells him that they have issued only one-half of the stock and that Seaver would be entitled to half his share according to his interest in the Johnston, which at that time was thirteen ninety-sixth. This appears from the following conveyances: On the 31st of January, 1881, Acheson made a deed to Seaver of five thirty-secondth of the Johnston (fol. 518). On the following March, Seaver deeded two small interests to Jones and Underwood, one ninety-sixth to each (fols. 644, 647). Five thirty-secondth minus two ninety-sixths equals thirteen ninety-sixth, and thirteen ninety-sixth of 100,000 shares equals 13,540, which divided by two equals 6,770 shares, which was the number of shares received by Seaver. Dunscomb did not inform Seaver that the 50,000 shares of unissued stock had been set aside to meet adverse claims, of which Seaver's was one, but Seaver made no deed of his interest to the Company and this afterwards made trouble and Seaver's deed had to be purchased (fol. 532). The settlement or partial settlement with Seaver was

not made until the 9th of April, 1881, four months after the Dunscomb settlement, the stock being issued to himself and wife (fol. 637, 640, 642). Dunscomb says that "Seaver was indebted to me from our old partnership, and I thought I ought to have a little more of the stock of the Company when we formed it, than Seaver did." But he did not tell Seaver this, as the settlement shows, and see Seaver's testimony (fol. 707), and he did not tell Seaver of the scheme to capture his entire interest as well as Acheson's in the property. Dunscomb claims that he had been paying all the bills and had been carrrying his partners, Acheson and Seaver, in the grub-stake contract and this probably was the real cause of Dunscomb's attempt to acquire their interest by means of the fraudulent deed.

On the 8th day of April, 1881, one day before the settlement with Seaver, Acheson and other parties who had become interested with him, filed an adverse clam on behalf of the Smuggler Two against the application for patent (fol. 481). This was followed by a suit in support of the adverse claim which was commenced in the U. S. Court at Denver, on the 7th day of May, 1881 (fol. 478), and on the same day an equity suit was also commenced in the same Court (fol. 463) praying that the ownership to the Johnston title be declared to be as alleged in the bill of complaint, namely, *that Acheson owned ten thirty-seconds*, O. H. Dean one thirty-second, Seaver five thirty-seconds, Margaret Dunscomb eight thirty-seconds, and the Fulton Mining Compamy or Chatfield, *or Johnston*, the remaining eight thirty-seconds, alleg-

ing also that *the real owner of the last mentioned eight thirty-seconds was Johnston.* The bill, however, did not make Johnston a party defendant, as it should have done.

Perry on Trusts, Sec. 873.

The plaintiffs in this bill were Acheson and wife and Dean. Subsequently two other suits were commenced in the State Court (fol. 451, 456) which were adverse claim suits on behalf of the Smuggler Two and Kansas City against the Chatfield which was substantially a re-location of the Kansas City, and these were the four suits that were compromised by the Fulton Mining Company. in pursuance of a resolution (fol. 576), which authorized the issuance of 37,500 shares or three-eighths of the the capital stock of the company to Howard M. Holden upon condition that these suits should be dismissed and upon the conveyance by the several claimants of all their interest in the properties concerned in the litigation to the Fulton Company. Thereupon, the suits were dismissed (fol. 449, 483), and the application for patent proceeded, entry was made and patent issued to the Fulton Mining Company for the J. C. Johnston and Chatfield mines (fol. 504).

There are some extraordinary features about these suits, which, however, we pass for the present, but the most important thing to notice is, that as with Dunscomb and Seaver, *the settlement was made upon the basis of the interests owned by the plaintiffs in the J. C. Johnston title and not in the Smuggler Two.* Acheson still owned ten thirty-seconds of the legal title under the deed from Crittenden and Adair to himself on August

10, 1880. He had only conveyed of this interest one thirty-second to his friend Dean (fols. 87, 667, 675, 469) (this deed was not recorded) and five thirty-seconds to Seaver (fol. 518), as above shown. He had made no conveyance to Dunscomb and, apparently, had declared no trust in his favor. As a matter of fact, he had partially declared a trust in the deed which he made to Oburn (fol. 529) shortly before the institution of these suits, which deed was expressly made "subject to the terms, conditions and trusts upon which he received said Johnston title," *but this deed was purposely withheld from record until after the settlement above shown. Thus Acheson and his co-plaintiffs apparently owned eleven thirty-seconds of the Johnston title, and this interest they claimed in their bill of complaint* (fol. 469, 677). Jones and Underwood, who were also represented in the settlement by Mr. Holden, as he testified (fol, 669, 673), owned one forty-eighth in the same title, and these two fractions amount to within one ninety-sixth of three-eighths; whereas, the interests of the several plaintiffs in the Smuggler Two location would aggregate considerable more than three-eighths. (See Appendix.)

Mr. Holden testifies that he and his associates represented in this controversy persistently refused to take anything less than the full amount which they claimed, and this is probably true, if we count their legal interest in the J. C. Johnston title, but it is not true according to their interest in the Smuggler Two. The other one ninety-sixth may be accounted for by the fact that in the other suit on behalf of the Kansas City against the Chatfield, the controversy involved the entire title (Chatfield

having re-located the K. C. as the Chatfield and having deeded it to the Fulton Mining Company), and, if the plaintiffs prevailed, the defendants would have nothing left of this property; whereas, if they prevailed in the Johnston case, the defendants (Johnston) were admitted to own one-fourth, hence the plaintiff may well have claimed a larger share of stock, so far as it represented the Kansas City interests (fol. 668).

The fact that Chatfield and Thomson and Sayer did not succeed in saving the Johnston quarter interest is now easily explained. They had given up to Dunscomb the interest claimed by him according to his supposed interest in the Johnston title, when Dunscomb had no legal title to convey to the company. And when Dunscomb went over to the enemy, as Acheson expressed it, he was treated accordingly, and the interest which he otherwise would have owned, under the title which Acheson held, was now claimed by Acheson and his associates (fol. 468). (This explains Dunscomb's testimony that Acheson *et al.* "were claiming more than we thought they ought to have.")

Hence, the members of the Fulton Mining Company, and particularly its executive head, did not care to contend for Johnston's fourth interest when the result of it might be that this interest would have to be made good by Dunscomb and the other stockholders disgorging a large portion of the interests which they had appropriated. Moreover, they had been detected in a palpable fraud, which was sure to be exposed in the trial of these suits, hence they would naturally be anxious to settle the litigation, even though it involved the sacrifice of the Johnston interest. This clearly appears from

the conduct of the litigation from its inception. Dunscomb testifies that his partners, Acheson *et al.*, "were claiming more than we thought they ought to have," and he says, "I think one reason why we gave them a little more than we thought they ought to have was *because we didn't want any more* law suits on the property (fol. 169, 199).

The answer in the case at bar, after alleging the settlements with Dunscomb and Seaver, alleges the bringing of the several suits by Acheson and his co-plaintiffs, and then states (fol. 52) that "the matters hereinbefore stated concerning the contract aforesaid, the relation between the parties thereto and the location of said Smuggler Two and J. C. Johnston lodes, and the matters set forth in said bill filed by J. C. Acheson, Elizabeth Acheson and O. H. Dean are true."

Bearing this in mind, let us refer to some of the averments of this bill of Acheson *et al.*, in connection with the answer which was made by the defendants, namely, the Fulton Mining Company, Dunscomb, Chatfield, Wilson, Sayer, Thomson and the two Seavers, for whom (the Seavers, by the way, solicitors for defendants, Messrs. Thomson and Sayer, appeared without authority (fol. 703).

After reciting the prospecting agreement the bill alleges "that in pursuance of said agreement said James C. Acheson furnished moneys and his proportion of the other necessary things to said Johnston with which to prospect, prosecute and perform the matters and things he was to do under said agreement, and he, said Johnston, was using the same when said "J. C. Johnston" lode mining claim was discovered and located; that said J. C.

Johnston lode mining claim was discovered and located by said J. C. Johnston while he was working under and in pursuance of said agreement, and that he caused the same to be located, one-half thereof in his own name, one-fourth thereof in the name of G. A. Crittenden, and one-fourth thereof in the name of J. W. Adair."

These allegations were denied by the defendant, as shown by the following extract from the answer:

"Defendants deny (and Dunscomb was one of the defendants) that said James C. Acheson, in pursuance of said pretended agreement, or in pursuance of any agreement, or at all, ever furnished any moneys or any proportion of any necessary or unnecessary things to said Johnston, with which to prospect or prosecute or perform any matters or things he was to do under said pretended agreement or any agreement.

Defendants deny that said Johnston was using any moneys or things furnished by said Acheson when said J. C. Johnston mining claim was discovered and located, and they deny that said J. C. Johnston lode mining claim was discovered or located by said J. C. Johnston while he was working under or in pursuance of said pretended agreement or any agreement whatsoever with the parties aforesaid, or any, or either of them.

The answer in which this denial appears is subscribed by Dunscomb, Chatfield, Thomson and Sayer, and other members of The Fulton Mining Company. They now say it was untrue and that they were convinced by Dunscomb of its untruth four months before the filing of the answer; but Johnston, who was their

client, had told them it was true that he was not using any moneys or supplies furnished by Acheson when the J. C. Johnston lode was discovered and located. Here was a material issue and the answer stated a perfect defense in equity.

Had Chatfield, the trustee, and Thomson and Sayer, the attorneys of Johnston, been acting in good faith for the protection of his interest, they would have gone to trial on this issue. Of course, they were not so acting, because they had denied his interest from the first and had sought to appropriate it. But had they been disposed to protect Johnston, they would have contested this issue and successfully contested it, as their evidence in this case abundantly demonstrates.

Chatfield now testifies that he told Johnston they found they had not the "shadow of a ghost" to maintain his case; but Dunscomb and Seaver, Johnston's former partners in the grub-stake, have both admitted, testifying in this case, that they had failed to comply with their contract in this behalf (fol. 164, 696, 176).

The answer further states (fol. 473) that "these defendants did not know and have never been informed, save by unreliable rumor and the said complainant's bill, whether on the 10th of August, 1880, or at any other time, the said George A. Crittenden and Joseph W. Adair made, executed, acknowledged or delivered to the said James C. Acheson under any name any deed of conveyance, or whether they ever granted, bargained, sold, conveyed or quit claimed unto the said James C. Acheson any right, title or interest in or to said J. C. Johnston mining claim, or whether any such

pretended conveyance was made for any valuable consideration and leave plaintiffs to make such proof thereof as they shall be advised is material."

Mr. Thomson, answering for the Standard Mining Company, now says that the bill was true and this denial was untrue. The bill further alleges (fol. 467) that "the defendants, Edward Dunscomb, I. W. Chatfield, W. J. Wilson, Daniel Sayer and Charles I. Thomson, have confederated together with the fraudulent and wrongful intent to cheat, wrong and defraud your orators out of their right, title and interest in and to said J. C. Johnston mining claim, and as part of such confederation and conspiracy, have organized, or pretended to organize, the said Fulton Mining Company, as aforesaid, of which said company they and each of them are officers."

Messrs. Chatfield, Thomson and Sayer, defendants in this case, have adopted the answer of the Standard Mining Company (fol. 320) and they now say that this charge of fraud and conspiracy which was made against them by Acheson and his co-plaintiffs was true.

The two adverse suits which were brought in the State Courts on behalf of the Kansas City lode against the Chatfield lode (fol. 457), also present some peculiar features. They seem to have been conducted in a very friendly manner. The plaintiffs were not even put to the trouble of issuing summons, Messrs. Thomson and Sayer having entered the appearance of all the defendants, waiving the issuing of summons (fol. 455, 461). In one of the suits on behalf of the Kansas City against the Chatfield lode, Johnston was a party defendant (fol.

451), and it was alleged that Johnston was a co-owner in the Kansas City lode with the plaintiffs, but that *having refused* to become a party plaintiff, he was for that reason made a defendant (fol. 454).

Complaint then alleges the unlawful entry of the defendant Chatfield upon the Kansas City premises, and his re-location thereof as the Chatfield claim. Subsequently these suits were dismissed with the others (fol. 449, 450), and in the settlement and issue of stock to Holden, *Mr. Johnston's further interest in the Kansas City* (fol. 433), *which is admitted and alleged in this complaint, was appropriated* (fol. 667). Johnston was never informed of these suits (fol. 432).

After the settlement of the Acheson suits by the issue of 37,500 shares of stock to Holden for the use of the parties whom he represented, the balance of the unissued stock, amounting to 9,896⅔, was divided among the original stockholders of the company, as follows (fol. 581):

Chatfield	1–4	shares	2,474
Wilson	1–4	"	2,474
Thomson	1–16	"	618
Sayer	1–16	"	618
Dunscomb (afterwards corrected to	1–3 28–96	" "	(fol. 586) 3,298

leaving a balance of 414⅔ shares undivided.

From the foregoing review of the evidence on this branch of the case, it appears:

1. That no suit was brought by Chatfield on behalf of Johnston against the claimants of any disputed interest in the property.

2. That at the time of the execution of the deed from Johnston to Chatfield and the contract

from Chatfield to Johnston, no suit had been brought against Johnston by the Smuggler Two parties, as was represented by Chatfield, and no such suit was threatened.

3. That the only *bona fide* claims or suits that were brought or made affecting the property were those which were caused by the fraudulent attempt of Chatfield and his associates to acquire the other half of the property in which Johnston had no interest.

4. That these claims and suits were settled on the basis of what the adverse claimants actually owned, or were supposed to own, in the J. C. Johnston title, outside of the trust interest belonging to Johnston.

5. That Johnston's interest was divided up amongst the stockholders of the Fulton Mining Company, in what manner it is impossible to ascertain, since it was an undivided interest, and it is unnecessary to say, since the Fulton Mining Company had notice of the trust through all of its officers and incorporators.

(On this point see first opinion of the Circuit Court).

6. That Chatfield and his grantees have denied the trust on which he (Chatfield) received Johnston's one-quarter interest in the property and have, therefore, performed no services on Johnston's behalf.

7. Hence, that Johnston's right of recovery is not limited to the one-eighth interest, covered by the Chatfield contract, but should include the other one-eighth, which he gave for services that were never performed.

We therefore claim that to the last question or division of this argument, viz.:

"*What interest is the complainant entitled to recover in the property?*"

The answer should be one-quarter.

The Circuit Court, in its first opinion, held that the complainant's right of recovery was limited by the terms of his contract with Chatfield to one-eighth, which interest he was entitled to on the happening of the condition stated in the contract, viz., the maintenance of the J. C. Johnston title, and that it mattered not how this end was accomplished, whether by suit or compromise.

From a strictly legal standpoint this position is perhaps unassailable, but we submit that equity will not allow a trustee, after having repudiated his trust and appropriated the trust property, to claim any compensation by reason of his having done for himself that which he had undertaken to do for his *cestui que trust*, but that equity will require him to restore the entire subject matter of the trust, together with any benefits which may have accrued to it during the existence of the trust.

Perry on Trusts, Secs. 432, 433, 835, 187, 828, 847, 861, 863, 864.

2 Lewin on Trusts, 857–908.

Moreover, the conveyance of this trust interest from Johnston to Chatfield was procured on Chatfield's representation that he could not safely take up the title bond of the quarter interest which he had bonded, for the reason that this interest was claimed by the Smuggler Two parties, and that it was necessary, therefore, to employ counsel to defend the title.

This was a mere pretext, as we have seen, since there was no controversy about Johnston's title to one-quarter of the property, whether called the J. C. Johnston or Smuggler Two, and it is now apparent that Chatfield's real purpose in procuring this deed from Johnston of his entire interest, was in furtherance of the ulterior design and scheme to acquire the rest of the title by fraud.

This raises a constructive trust and Johnston is entitled to recover the entire quarter interest so procured.

Perry on Trusts, Sec. 166 *et seq.*

2 Pom. Eq., Secs. 1044, 1049, 1053, 1055 and 1056.

Was there laches in bringing the suit?

The contract recites that Chatfield is to institute certain legal proceedings for the purpose of "vesting" the Johnston title in Chatfield against persons who claimed adversely to him an interest therein, and further on its reads that upon so "*acquiring* the "*title legal and equitable*" to the said mine by means of the legal proceedings so about to be commenced, etc.

This language obviously contemplates something more than a suit. A suit may be brought to quiet the title, or to try the title, and recover possession against an adverse claimant, but suits are never brought for the purpose of *vesting or acquiring* the title to lands. The "legal and equitable" title to a possessory mining claim can only be "acquired" by patent proceedings. So that taking the language of the contract just as we find it, the "legal proceedings" mentioned in the contract must have reference to an application for patent as well as to

the litigation frequently incident thereto, and such was the understanding of both parties to the contract (fol. 346, 135), and of Mr. Sayer who drafted it (fol. 415), and, as a matter of fact, the only legal proceedings which were instituted by Chatfield and his associates was an application for patent. This feature of the case is of great importance, for the reason that upon it depends the question, when did plaintiff's cause of action accrue? And on this question depends the question of laches, on which the case was finally decided.

If we are right in this construction of the contract, the complainant must be held guiltless of the charge of laches. The evidence on this branch of the case is found in the deposition of Johnston and Chatfield. Johnston testified as follows (fol. 347):

Q. Do you know when the title to the Johnston claim was perfected, as a matter of fact, by the procuring of the patent? A. The first knowledge I had of it was a letter that Mr. Northrop got from Leadville.

Q. About when did that knowledge come to you? A. That was some time during the summer of 1885, spring or summer.

Q. What did you do then? A. Chatfield had met me two or three times previous to this. He always told me that the title wasn't perfected before this. I met him here (in Denver) one day, and told him I understood that the claim was patented and I wanted my interest. We had quite a long talk, and he proposed that we go to Leadville and get Thomson and Sayer and get it fixed up. I told him I had no money to pay fare to Leadville, and I looked to him for my interest,

that he held it and I looked to him, and finally he insisted that I would go to Leadville, and I told him that I would not and that I would not leave it to Thomson and Sayer. He then claimed that there was $3,500 or $3,600 that I owed him for development work, and finally he said that if there was anything coming to me, I had better go to the Courts and get it.

Q. Was there anything said about the probability as to the time when the patent would be procured? A. Yes, we thought it would take about a year or a year and a half to get the patent. They were to push it right ahead.

Q. Do you know anything about the incorporation of the Fulton Mining Company? A. There was no name—we didn't name any Fulton Mining Company. They had talked among themselves about organizing a company, but I didn't know anything about the name of it, and didn't hear anything about it until I got back from Wood River, in 1883.

Q. When did you go to Wood River? A. I went to Wood River in 1882—in March of 1882, I think. I went to Aspen in 1881; went to Leadville, and went to Thomson and Sayer's office, and asked how the case was, and he said it was compromised, and I told him I would like to take the papers to copy them, and he gave them to me, and I took the papers and looked them over, and went down to have them copied, but I found it would cost too much, and so did not have it done.

Q. What papers? A. Contract between Chatfield and I, Crittenden, Adair and I and the copy of the original grub-stake contract between

Dunscomb, Seaver and I. I supposed there was a contract between Chatfield and Thomson and Sayer, and I wanted to copy that more than anything else. I don't think it was among the papers.

Q. Do you know anything about the bringing of any suits in the United States Court, in the spring of 1881, by the claimants of the Smuggler Two against the Johnston location? A. No, sir, not until 1885.

Q. How did you learn about that? A. I learned it from Judge Northrop, my attorney.

Q. When did you learn? A. It was some time during the spring of 1885. I didn't learn then when the suit was pending.

Q. Were those suits brought, to your knowledge? A. No, sir; the second suit I have learned of since you have been in the case. I never learned of it before.

Q. Were the suits compromised and dismissed, and, if they were dismissed, was it with your consent and knowledge? A. No, sir; they were not.

Q. Were you ever notified by Thomson and Sayer or Chatfield to furnish any evidence or witnesses in those suits or in any suits between the Smuggler Two and the Johnston? A. No, sir.

Q. Were you accessible in May and April, so that Chatfield or Thomson and Sayer could have communicated with you? A. I was in Thomson and Sayer's office in 1881. I was working for Chatfield in 1881, on a sub-contract for him.

Q. Was it in May, 1881, in Thomson and Sayer's office, that Thomson told you the suit was compromised? A. Yes, sir.

Q. How long had you known Chatfield prior to the fall of 1881, when you had this business with him? A. I moved out here in 1873, and got acquainted with him soon after—within a very short time.

Q. Where had you known him? A. I knew him at Littleton. He lived on a ranch above Littleton, and afterwards lived in Littleton several years.

Q. How intimate was your acquaintance? A. As intimate as men could be; especially his family and mine. They were both from Missouri. His wife was a Missourian, and we were from Missouri, and our families were quite intimate. I always thought very well of him before this, except on this railroad contract, on which he owes me a little balance.

Q. I will ask you whether or not he had your confidence? A. Yes, sir, he had. I would as soon trust Chatfield as well as any man I was acquainted with up to that time.

Q. Now from the time of the original contract with Chatfield and Thomson and Sayer, what interviews did you have with Chatfield and what was said during the interviews respecting this business? A. Why, several times in 1881, when I was working for Chatfield, I inquired about the suit and the proceedings under the J. C. Johnston location, and he told me it was not consummated; that the patent had not been issued; and then I would see him, for some time, frequently, and then I didn't see him after that until I returned from Wood River, in 1883, I met him and inquired of the suit, and if the patent wasn't issued, and he

always told me that as soon as the patent was issued I would get my interest. I saw him probably two or three times between that and 1885.

Q. When did you learn and how did you learn that the patent had been issued? A. I learned it from Judge Northrop after I had employed Northrop and after having this talk with Chatfield here, when he told me I would have to go to the Courts to get any interest I might have.

Q. After that interview with Chatfield and his referring you to Thomson and Sayer, you learned that the patent was issued? A. Yes, sir, he told me the spring before, that he was buying horses and going to Aspen, and that the patent wasn't issued.

Q. Then what steps did you take to recover your interest in the property? A. I went to Judge Northrop and entered into an agreement with him to prosecute the case for me and I was to pay the costs.

Q. What did he do? A. He went to Leadville and saw Thomson and Sayer and tried to get this contract to make a copy of it, and finally wrote out the bill and filed it in the United States District Court.

Q. Do you know what became of that case? A. I think it was either dismissed or withdrawn. The Fulton Mining Company demurred and I came down to hear the argument. Hallett intimated, or it was understood that Northrop would dismiss the case and bring it at Leadville.

Q. Was it brought there? A. Yes, sir.

Q. By Northrop? A. Yes, sir.

Q. Do you know what became of that case?

A. I understood the summons was quashed in some manner.

Q. Then you brought this present action? A. Yes, sir, this case was brought, as I understand it, over at Aspen and transferred here.

Mr. Chatfield was not examined on this subject by counsel for defendant, but *on cross-examination by counsel for complainant*. He testifies as follows (fol. 137):

Q. What demands, if any, did Johnston ever make upon you for his interest in that property? A. I think, in 1882, at Littleton, he spoke to me and said he thought he ought to be entitled to his interest in the property; that we should have gone on and contested that case.

Q. What did you say to him? A. If I recollect right, I told him we had no shadow of a ghost to maintain his case, and it was divided up among the stockholders—in other words, among the claimants, Dunscomb, Acheson, Seaver and Holden.

Q. Then, this one-eighth interest which he was to have, was divided up among them? A. I think that is what I told him at that time, in Littleton.

Q. As a matter of fact, it is true, however, is it not, that the name of J. C. Johnston was continued and the property patented in that name, and the title did finally vest in the Fulton Mining Company, which was your grantee? A. Yes, sir; I think that is right.

Q. Did you ever have any other interview with Mr. Johnston in regard to the recovery of this one-eighth interest claimed or called for by that contract? A. Outside of that one, in 1882?

Q. Yes, sir. A. He spoke to me once or twice two or three years ago. (This testimony was given July 12, 1888.)

Q. Do you remember the conversation? A. I do not.

Q. Was there any conversation with reference to the patent proceedings, or the getting of the patent by the Fulton Mining Company? A. Not that I recollect.

Q. Was there any talk about getting a patent to the J. C. Johnston, at the time of the transaction, in Leadville, between you and Johnston and Tomson and Sayer? A. Well, I don't recollect what that talk was.

Q. Was there any talk at that time about organizing a stock company, at the time of the original transaction? A. I don't recollect that there was. I don't think there was.

Q. Don't you recollect that something was said about Johnston's intention to go to Idaho or somewhere in the Northwest, and for that reason it was better to have his interest turned over to you for the purpose of applying for the patent and the organization of the stock company? A. I don't recollect such talk.

Q. Do you say there was not? A. I don't recollect.

Q. Do you recollect Mr. Johnston did go? A. I recollect he went away, but can't say where he went.

Q. I will ask you whether at one of these interviews between you and Mr. Johnston, you did not refer him to Messrs. Thomson and Sayer and

tell him you could not do anything about it? A. No, sir; I do not recollect anything about it now.

Q. And whether at one of these interviews you did not demand from him his share of the expenses of the mine? A. I don't recollect demanding of him—no, sir.

Q. Didn't you state to him a certain amount he would owe on the expenses? A. Not that I recollect of—no, sir.

Q. Didn't you on several occasions inform him that the patent had not been obtained, and that according to the contract he was not entitled to his interest unless you got the patent? A. I don't recollect anything of the kind.

* * * * * *

Q. When did you have your last interview with Johnston? A. I didn't have any interview, except Johnston spoke to me in Denver, and I don't recollect what was said. He got angry and we cut it short, and I went one way and he went the other.

Q. Did he demand his interest at that time? A. I don't recollect that he did.

Q. When was that? A. About two or three years ago. (This deposition was taken July 12, 1888).

Q. Were you manager at that time? A. No, sir.

Q. Were you a Director? A. I think so.

Q. During what years were you superintendent or manager of the mine? A. In 1886, I think. I could tell by going to my memorandum book whether it was 1886 or 1885; may be it was 1885.

Q. During the year 1885? A. Yes, sir; I think so.

Q. And until Mr. Brown became superintendent? A. Yes, sir.

Q. When did he come in? A. In 1886 or 1885; I couldn't be positive which year.

Q. Then, if this last interview between you and Johnston was two or three years ago, it is possible that you were superintendent and manager at that time? A. I think it was during the time my brother and some other parties had a lease on the property when we had the talk on the street, and I don't recollect what was said.

On this testimony we remark:

1. That very little weight should be attached to the *non me reminiscor* of Chatfield as against the clear and positive testimony of Johnston concerning his interviews with Chatfield.

2. That Chatfield's statement that Johnston's interest had been divided up amongst the adverse claimants was untrue, since the greater portion of it had been appropriated by Chatfield, Thomson, Sayer and Dunscomb.

3. That the statement of Thomson and Sayer in the spring of 1881 that the case had been compromised was untrue, since the Acheson suits had only just been brought, and were not compromised until a year later. It does tend to show, however, that Thomson and Sayer had no intention of defending those suits.

4. That notwithstanding the compromise of the litigation, Johnston's cause of action did not accrue until the patent issued, because the "legal and equitable title" would not be "vested" in Chat-

field or his grantee, the Fulton Mining Company, until that time.

5. That all parties acted upon this construction of the contract.

6. That had Johnston supposed he was entitled to his interest on the "compromise of the case," he would naturally have demanded his interest on receiving that information, and the fact that he did not do so shows that such was not his understanding of the agreement.

It has been the fortune or misfortune of the plaintiff to have had three sets of counsel, who have brought as many suits. The first was brought in the Federal Court at Denver and bill filed September 23, 1885 (fol. 319). That suit was dismissed upon a demurrer to the jurisdiction of the Court. Thereupon, on the 19th of August, 1886 (fol. 544), the second suit was brought in the State Court, which, after some delay, caused in part by the death of counsel for plaintiff, was dismissed because of a defective summons under a new practice act, which was soon repealed.

As already stated, the present suit was brought in the State Court on the 15th day of October, 1887.

We are aware that some of the facts just stated do not appear in the record of this case, but it does appear without contradiction from the evidence above quoted that these three suits have been brought and the matters which do not appear in the record are mentioned simply to show that it is not fair to assume that mere delay in the bringing or prosecution of a suit constitutes *laches*, and we take it that, although under the practice of the United States Courts the defense of laches may be raised

without having pleaded it in the answer, yet in such case a party is not required to anticipate and meet this defense to the same extent and with the same particularity that he would when the issue has been raised. In other words, laches will not be found when not pleaded unless it appears clearly and affirmatively from the evidence that there has been such unreasonable delay as to warrant the inference that the plaintiff has acquiesced in the injury of which he complains.

The Circuit Court entirely overlooked the bringing of the second suit, and ignored the first on the ground that it was "misconceived," "and was between citizens of the same State, and, therefore, not within the jurisdiction of the Court."

This last statement is inaccurate, for the reason that the bill alleges that the complainant is a citizen of the State of Colorado, and that seven of the defendants are citizens of other States (fol. 291).

Admit that it was misconceived in some respects. It was, nevertheless, on the same cause of action, and it was notice to the defendants that the plaintiff was at least asserting his claim and was not acquiescing in their appropriation of his property. This certainly negatives any presumption of laches.

The Circuit Court made the further criticism that the first suit "was kept on the docket for eleven months, during which it was not moved at all." There is no evidence in this case to support this statement, but there is evidence that a demurrer was filed and set down for argument (fol. 351) and that the second suit was brought about

eleven months after the dismissal of the first (fol. 544). Moreover, parties are not always responsible for the "law's delays," and, certainly, in the absence of any proof, it is unfair to hold the complainant responsible therefor. There may have been many and good reasons which would absolve him from all blame, but, in the absence of any such issue in the pleadings, he was not called upon to enter into any further explanations. There was less delay and as much done as there was in the prosecution of the old suits which were brought in the same Court on behalf of Mr. Holden and others against the Johnston claimants, and yet Mr. Holden testified that those suits were prosecuted with the "utmost diligence and vigor." (Fol. 672.)

But our chief objection to the opinion of the Court is that it assumes, erroneously, as we claim, that the plaintiff's cause of action accrued as soon as he was advised of the compromise of the litigation, instead of on the issue of patent.

This point we have already argued, and in this connection we refer to our petition for rehearing and the points therein stated.

(Appendix, p. .)

What, then, is the aspect of the case, from this point of view?

The Colorado Statute provides that bills for relief on the ground of fraud, shall be brought within three years after the discovery of the fraud. General Statutes, Sec. 2174, Mills' Annotated, Sec. 2911; and, in case of the existence of a trust, within five years after the cause thereof shall accrue. Id., 2175, 2912.

This, clearly, is a case of fraud. The fraud was

discovered in the summer of 1885. The first suit was brought September 23, 1885. The second suit was brought August 19, 1886, on the dismissal of the first, and the third suit—this one—was brought October 15, 1887—something over two years after the cause of action accrued.

This delay is explained, and, we think excused, by the former suits, and certainly the fact that they were brought, and that the defendants were summoned and appeared, completely rebuts any presumption of acquiescence, on which, as above remarked, the doctrine of laches is founded. Hence, we claim that there has been no laches in the bringing of this suit.

"Acquiescence cannot be inferred until the *cestui que trust* has actual knowledge of the breach, for the reason that it is the duty of the trustee to execute the trust, and it is not the duty of the *cestui que trust* to make any inquiries."

Perry on Trusts, Sec. 850.

Moreover, if we treat the trust as an express trust, simply, as the Circuit Court, with considerable charity we think, has done, "the Statute of Limitations has no application and no length of time is a bar. Against an express and continuing trust time does not run until repudiation or adverse possession by the trustee and knowledge thereof on the part of the *cestui*. Such a trust is only barred on the doctrine of prescription by the lapse of twenty years, and so long as the relation of trustee and *cestui* continues unbroken the possession of the trustee is that of the *cestui*, and there can be no adverse possession for time to run upon. The trustee must clearly repudiate the trust and

assume an adverse position, with notice to the *cestui*, before the statute can begin to run." * * *

"The relation and privity between trustee and *cestui que trust* are such that the possession of the one is the possession of the other, and there can be no adverse claim or possession during the continuance of the relation. Lord Justice Knight Bruce said, that where one entered into possession as trustee, he could not be permitted to set up a possession or title in himself adverse to the *cestui que trust*. It is the duty of the trustee, if he intends to claim the estate, to resign his trust and deliver over the possession which he received as trustee. He will then be in a position to maintain his claim, for no claim should be made through a breach of trust. And no trustee, while occupying a place of trust and confidence, should be allowed to set up an adverse title. This rule applies to all acting as trustees, whether regularly appointed or not."

Perry on Trusts, Sec. 863.

In its last opinion (fol. 732) the Circuit Court announces the principle that "where property is of fluctuating value, and work requiring courage and energy and expenditure of money is going on, he who would assert ownership in it must do so promptly and share in the hazards as well as the profits of the enterprise"—citing Twin Lick Oil Co. vs. Marbury, 91 U. S., 587, in support of this proposition.

We submit that there is no analogy between the case cited and the case at bar. That was not a case between a trustee and *cestui que trust*. It was a case where a corporation claimed the right to avoid a sale of its property to one of its direc-

tors upon the foreclosure of a mortgage for moneys loaned the company by the director, and it was held that assuming, though not deciding, that the sale was voidable at the option of the company, it must exercise this option within a reasonable time.

Proceeding, the Circuit Court said, "Complainant failed in such diligence for more than five years and until the great value of the property was fully demonstrated by the defendants claiming adversely."

This is erroneous, both as to the matter of the delay, as we have seen, and as to the value of the property, since the Master's report (fol. 718) shows that up to July 1, 1887, just after the conveyance of the property to the Standard Mining Company, and three and one-half months prior to the bringing of the last suit, the net profits of the mine had amounted to only $2,682.04, and the total net profits at the time of stating the account on the 1st of April, 1889, after the cause had been heard, amounted to only $41,592.55. It further appears, from the Master's report and from the records of the Fulton Mining Company (fol. 605), that at the time of the bringing of the first suit by the plaintiff the mine had never paid expenses and was in debt.

Is the defense of Laches more available to a defendant corporation than it is to a natural person?

The learned Judge of the Circuit Court so held on the ground that the shares of a corporation are liable to fall into the hands of innocent purchasers—as if the shareholders of the corporation could be innocent purchasers of the stock, when the corporation is not an innocent purchaser of the property which the stock represents; and

that the corporation, while admitting that it is not an innocent purchaser, may, nevertheless, defend against the rightful owner, on the ground that certain of its share-holders may have bought their stock without notice of an outstanding title or equity, of which the corporation itself, through its officers, had notice prior to the time of its purchasing the property.

This is a new doctrine, but we submit that the first opinion of the Circuit Court is much more sound. In that opinion the Court said: "It is incident to a corporation that once affected with notice, while it exists, it shall be assumed that it has that notice throughout its existence, whoever the individual share-holders may be. If new shareholders take the place of those who were first connected with it, they are affected with notice as much as those who were in the organization at the time that notice came to the corporation."

Moreover, it appears from the records of the Fulton Mining Company that, from the time of the settlement with the Holden parties and the issue of 37,500 shares of stock to Holden, in pursuance of that settlement on the 11th day of December, 1882, (fol. 620, p. 373) until the transfer of the property to the Standard Mining Company on the 17th day of June, 1887, there had been no material change in the stockholders of the company; and there is no evidence to show that there were any "innocent purchasers" of any stock from the time that Johnston's cause of action accrued to the time of the bringing of his several suits.

In this connection we observe that it appears from the stipulation of parties, quoted at the be-

ginning of the argument, and from the agreed statement of facts (fol. 429) as well as from the evidence in this case,

1. That the present defendant, the Standard Mining Company, at the time of acquiring title to the property in controversy had full notice of the trust which complainant is seeking to enforce.

2. That said company also had actual notice and knowledge of the two former suits brought by the complainant to enforce said trust.

3. That the Standard Mining Company is the successor in interest of the Fulton Mining Company, owning and working the same property, and that the Standard Company paid no consideration for the J. C. Johnston claim, except to issue its stock to the share-holders of the Fulton Mining Company, according to their several shares and interests; and that W. J. Anderson paid no consideration for said J. C. Johnston claim, when the same was conveyed to him, and was only an agent and trustee for the Fulton Mining Company and the Standard Mining Company during the time that said Anderson held said title.

4. That the Standard Mining Company, of Kansas City, was incorporated July 2, 1886 (fol. 500), by Messrs. Holden, Chick and Dean, two of whom were still Directors and all stock-holders in the Fulton Mining Company, of which Mr. Holden was President (fol. 610, 615), and that the deed from the Fulton Mining Company to Anderson in trust for the Standard Company was made July 5, 1886 (fol. 556), which was about the time of the dismissal of Johnston's first suit.

5. That the deed from Chatfield to the Fulton

Mining Company, being a quit-claim deed (fol. 509), hence that the company and its grantees could not claim protection as *bona fide* purchasers for more than Chatfield's actual interest at that time.

It appears from the first opinion of the Circuit Court that, while the case was under advisement, some attempt was made on the part of the Standard Mining Company to repudiate the stipulations above referred to. On this subject, we quote from the first opinion as follows:

"Counsel for the defendants entered into an agreement and stipulation to the effect that the evidence was sufficient to affect the Standard Mining Company with notice. After the case was submitted, I received from the President of the Standard Mining Company a communication, in which this was denied, and the authority of counsel to make such agreement and stipulation was also denied. From that I felt it my duty to look into the testimony to determine whether further proof upon that subject should be called for, and upon that I arrived at the conclusion that the evidence was full and clear. That, as matter of law, the Standard Mining Company must be taken to have received this property with notice of Johnston's interest in it."

The Court then proceeds to review the evidence on this subject, and concludes that the matters stipulated bearing upon the liability of the Standard Mining Company, were fully supported by the evidence, and that there was no occasion for the taking of further testimony.

(See first opinion, Appendix.)

"It is a universal rule that if a man purchases property of a trustee, with notice of the trust, he shall be charged with the same trust in respect to the property, as the trustee from whom he purchased."

Perry on Trusts, Sec. 217, and cases cited.
Id., Secs. 219, 860.

And, "if the trustee convey the estate by a breach of the trust, the *cestui que trust* may follow the estate into the hands of a volunteer, whether he had notice of the trust or not."

Id., Sec. 828.

Notice to agent is notice to principal.

Id., Sec. 222.

May be either active or constructive.

Id., 223.

It should also be remembered that Johnston left his contract with the attorneys, Thomson and Sayer, who promised to have it recorded, as Johnston testifies. The fact that he left the contract with them shows that he regarded them as his attorneys, though they deny that they were employed by him. Prior to the bringing of the suit, Johnston made demand upon them for this contract, which demand was refused (fol. 331), and it was necessary to get an order of Court to obtain an inspection of it (fol. 59). This explains and excuses Johnson's failure to record the instrument. He supposed he was dealing with his friends, instead of with parties who were plotting to get his interest away from him.

It follows from what has been said that, in our judgment, the Court below erred at the final hearing, first, in decreeing that the complainant was

entitled to recover a one-eighth interest only: and secondly, at the rehearing, in decreeing that the plaintiff was guilty of laches, and that such laches was a bar to his suit, and we respectfully ask that the judgment be reversed and the cause remanded with proper directions to the Court below.

Respectfully submitted,

LEON D. GENESTE,
Counsel for Appellant.

HUGH BUTLER,
Of Counsel.

APPENDIX.

In the Circuit Court of the United States, February 28, 1889, Hallett, J. (Orally.)

J. C. Johnston brought a bill against the Standard Mining Company, of Kansas City, and the Fulton Mining Company, and several persons to enforce a conveyance of an interest in the J. C. Johnston mine; also to have an accounting of the proceeds of the mine as to that interest. The prayer of the bill is, that complainant decreed to be the owner of an undivided one-fourth of the Johnston mining claim, and that the defendants, the Standard Mining Company and some others, execute a deed to him that the defendants account to the plaintiff for all proceeds received by them, or any of them, of the ores mined and extracted from said Johnston and Chatfield mines and premises, from the 9th day of October, 1880, until the present time; and that a decree be rendered for the amount. In case this relief cannot be given, defendant asks for the value of an undivided one-eighth of said Johnston mine and premises, which he alleges to be $125,000; this against some of the defendants; and then there is further prayer for the inspection of papers, upon which the plaintiff relied to maintain his suit. The history of the title to this claim presented in the record, begins in the spring of the year 1880. Mr. Johnston, the complainant, found some indication of a lode in that locality in the year 1869: Preceding that time, during the winter of 1879 and 1880, he became acquainted with Mr. J. E. Seaver, he had set up

stakes upon the claim, in 1879, and it was assumed that any right which he might have acquired in that way would expire during that winter. And Mr. Seaver offered him some inducement to return to the claim and arrange the stakes during the winter, and this was done by Mr. Johnston, Mr. Seaver paying him therefor the sum $100. Later on, other persons were associated with him in respect to this property and some other locations which he proposed to make at Aspen—Mr. J. E. Acheson and Edward Dunscomb—so that in the spring of 1880, there were four—Johnston, the complainant, Acheson, Dunscomb and Seaver, who joined together in what is commonly called a grub-stake contract, by which they were to share in any discoveries that they might make during the coming season, and in which Johnston had made in the preceding year in the proportion of one-fourth to each. This agreement was in writing; but it has not been offered in evidence. Probably the parties are pretty well agreed as to its terms. As contemplated by it, Mr. Johnston returned to the vicinity of Aspen early in the year 1880, and proceeded with some work on these claims, and after awhile Seaver and Dunscomb came also, and something was done while they were there. Pretty soon, however, about the 1st of June, 1880, Seaver became ill, and Dunscomb went out from that country with him, and they did not return any more until towards the end of the year, I believe. Johnston proceeded with the work after their departure; he had a number of men employed, and there is some controversy as to whether he made a discovery of valuable ore in place, be-

fore the month of August, 1880. Acheson came back in the early part of July, apparently with some purpose to supply the funds which the contract required of him and of Dunscomb and Seaver in carrying on the work. Perhaps I ought to remark, in reference to this contract, that by its terms Johnston was to carry on the work on this claim, and others which they should take. He was to receive from his associates seventy-five dollars per month and the funds necessary to pay the men and purchase supplies, provisions and the like. Acheson came in in July, with some intention, probably, to supply funds for this purpose; but before he set about that he fell into some game of chance and lost his money—the greater part of it—and so failed of his errand and went away. Thus matters went on, the expenses and debts of the property accumulating, until about the 1st of August, when, as Johnston says, some of the creditors became importunate and it became necessary to do something towards paying them. Amongst others was a firm of Crittenden & Adair, to whom something was due, and these men proposed if they could have an interest in the property, to pay off all debts of the mine, to pay Johnston's wages, and I believe to pay what had been advanced by Acheson, Dunscomb and Seaver towards the expenses of the property. Upon that a new location was resolved upon, in which Johnston, the complainant, should take one-half and Crittenden and Adair the other half, in consideration of receiving this interest which Crittenden and Adair would pay the debts and expenses of the mine. About

the first of June a certificate had been made and put on record in the County of Gunnison, in which the territory then was, in which Johnston and the wives of Dunscomb and Seaver were mentioned as locators, and Johnston had by that certificate an interest of one-fourth and each of these women had an interest of three-eights therein, as it is understood representing their husbands and Acheson as to the three-eighths of the property; the first certificate was known as Smuggler No. Two; the second was in the name of the complainant, J. C. Johnston. When this certificate had been made, Johnston, who had received an injury somewhere upon this property which disabled him for the time, and Crittenden and Adair, together with one White, who was employed upon the property, and to whom a considerable sum of money was due for his services, went to Leadville, as they claim, to raise money for carrying out the agreement between Johnston, Crittenden and Adair, as the defendants say, with the intent to sell the property to whoever would purchase, and for whatever price could be obtained. Soon after their departure, Acheson again appeared at Aspen, and finding what had occurred followed them to Leadville. There some negotiation occurred between the parties, between Acheson and Crittenden and Adair, and probably with Johnston also, which resulted in an agreement that Crittenden and Adair should convey to Acheson whatever interest they had acquired by the new location certificate, called the J. C. Johnston, would pay $50 for their services, he should have refunded to them whatever money they had advanced for the debts of the mine, and

Acheson should resume his place for himself and for the others as one of the owners of the property. This conveyance was made by Crittenden, and thereupon, apparently, they retired from any claim or assertion of ownership in the property in any way. Some promise was made by Acheson to the effect that he would meet Johnston at his home in Littleton, near this city, a short time after, and pay the wages due him. He gave him something like $25 with which to pay his expenses in going home. White, who was there to collect what was due him, demanded more, and received something from Mr. Acheson, $100, or something like that, and more was to be paid him at Littleton in a short time. It seems to have been understood at this time that if these payments were made by Acheson according to his agreement, the parties were to stand in the same relation which had existed between them prior to the making of the Johnston certificate; whether the Johnston certificate was then to be cancelled, and the parties were to proceed under the Smuggler No. Two location of earlier date, is perhaps not so very clear; but there is testimony from which that may be inferred. These payments were not made as expected, they were not made to Johnston or to White, and perhaps not to persons to whom money was due in and about Aspen, for work done upon claims. Johnston went home, and thus matters stood until the 14th of September following. These things occurred in the early days of August, somewhere from the 1st to the 10th.

Upon the 14th day of September, 1880, Johnston made to Isaac W. Chatfield, who appears for

the first time in these transactions, a bond for a deed to one-fourth of the premises. That was the interest claimed by him in the Smuggler No. Two location. As already stated, in the Johnston location he claimed one-half. In this bond to Chatfield, both locations are mentioned, the J. C. Johnston and the Smuggler; so that, whether it was upon one title or the other, he held that one-fourth interest. Chatfield was to pay for this interest $1,200, in the manner specified in the bond, and was to receive a deed for it upon paying for that interest. All the evidence tends to prove that the situation of this property as to both locations, Smuggler No. Two and the J. C. Johnston, was explained to Chatfield at this time, and the circumstance that both locations were mentioned in the bond supports that view. Thus matters stood until the 12th day of October following, a little less than a month. Then further negotiations occurred between Johnston and Chatfield, and Johnston executed to him, to Chatfield, a deed for all his interest in the J. C. Johnston mine, for the sum of $1,200, the precise consideration which was to be paid by Chatfield, according to the terms of the bond, for the one-fourth interest; and Chatfield then executed to Johnston an agreement of the same date, which was drawn by Mr. Daniel Sayer, who, with Mr. Thompson, was then acting as Chatfield's attorneys, by which Chatfield, the party of the first part, for and in consideration of the sum of one dollar to him in hand paid, and for other good and valuable consideration to him moving from the party of the second part, doth hereby covenant and agree to and with the said

party of the second part, that in the event of the party of the first part prevailing and succeeding in certain legal proceedings, about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part against persons who claim adversely to him, an interest in the following described property, to-wit: The lode, lead and mineral deposit, know as and called the J. C. Johnston lode, situate, lying and being in the Roaring Fork Mining District, Gunnison County, State of Colorado; that the party of the first part upon so acquiring the title, legal and equitable, to the said mine, by means of legal proceedings so about to be commenced, doth hereby covenant and agree to and with the said party of the first part, to convey to the said party of the second part an undivided one-eighth interest in and to the said above described lode, which shall be free and clear from all expense incidental to the litigation incident to said suit.

It seems to have been understood at the time this deed and this agreement were made, that Chatfield, or some company to be organized by him for owning and managing this property, should obtain a patent for this claim from the government of the United States, and upon all the evidence, there is no reasonable ground to doubt that the consideration of this agreement was that this title should be maintained, the J. C. Johnston title in the Courts and elsewhere if that could be done, and if successful in that, that Johnston was to have conveyed to him one-eighth part of it. All of the circumstances point to this conclusion. The bond

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which had been given a month preceding was for one-fourth interest. The conveyence was to be made upon payment of $1,200, this precise consideration is mentioned in the deed, so that nothing was added in the conveyance by Johnston in the way of consideration. The extent of the interest conveyed by the deed under the Johnston location, although not defined as one-half in the deed itself, was undoubtedly one-half, and receiving this one-half, the contract and agreement of Chatfield was that if he should maintain this title, that he would reconvey to Johnston one-half of that half, or one-eighth of the whole.

Mr. Chatfield in his testimony maintains that by this deed it was represented to him that he was to get the whole property, but he was certainly familiar—as were his attorneys, Thomson and Sayer, and Wilson was associated with them also in his purchase, although not mentioned in the deed—with all the circumstances relating to the the title; and a more convincing circumstance that any other is the fact that there was incorporated in this agreement as it was originally drawn and stricken from it before it was signed, upon an objection made by Johnston, a provision to the exact effect which he claims in his evidence, the agreement of the parties extended.

The last clause of the agreement, as it was written, was, "And it is mutually agreed that at the time of the ensealing and delivery of these presents that all the title which appears in record, in the name of J. C. Johnston or John C. Johnston, is already vested in the said I. W. Chatfield, and the suit about to be brought by said Chatfield for

the recovery of the portion of the lode which does not appear on the record in the name of said Johnston. That is to say, the suit in this agreement mentioned, and which Chatfield bound himself to bring in defensed of this title, was for a part other than that which had been conveyed to him by Johnston.

Upon seeing that clause in the agreement, Johnston objected to it. Mr. Chatfield sought his attorney, Mr. Sayer, who had drawn it, and was advised by Mr. Sayer to strike it out if Mr. Johnston raised any objection, and that was accordingly done by some one before the signatures were attached. It seems impossible, in view of the fact that there was an attempt made to put into this agreement a statement that the title conveyed by Johnston was of the whole mine, that any such meaning can be attached to the transaction at this time.

By this agreement, in very plain terms, Mr. Chatfield bound himself to maintain the title of the Johnston lode and against the Smuggler location, by suit to be brought by him. There is some question in the record whether that was the understanding.

The account given of the agreement by Johnston himself does not correspond wholly with this written article, and perhaps none of the parties in their oral testimony coincide with what is here expressed; but according to the familiar rules, as well established as anything can be in law, the oral declaration of the parties at the time, and their recollection of what occurred between them, can-

not be received to vary and contradict the record itself.

After the conveyance by Johnston to Chatfield, and on the 9th day of December, 1880, a corporation was formed, called the Fulton Mining Company, the defendant in this suit. The corporators were Edward Dunscomb, one of the associates in the grub-stake agreement; Chatfield, the grantee in the conveyance from Johnston of the Johnston title; William J. Wilson, associated with him in the conveyance from Johnston, and who also received very soon after that conveyance was executed a deed from Chatfield to a portion of the interest acquired by him; Mr. Daniel Sayer and Mr. Charles I. Thomson, who were Mr. Chatfield's attorneys, and on the 14th of the same month and before the certificate was filed for record in the office of the County Clerk and Recorder, Mr. Chatfield conveyed the property to the Fulton Mining Company. The certificate was filed for record on the 22d of December, 1880. It seems to have been a question in the minds of the counsel, or some of them, whether the conveyance made after the making of the certificate, but before it was of record would be effectual to transfer title to the Fulton Mining Company. That I suppose is not a question that it is necessary to consider.

Soon after the conveyance by Chatfield to the Fulton Mining Company, the corporators in that company had stock issued to them, which apparently was upon no other consideration than the conveyance executed by Chatfield to the company. That is to say, they paid nothing in money for the stock. In various amounts Mr. Dunscomb received

more than any, 14,583 and one-third shares; Wilson 12,500 shares; Chatfield 12,500 shares; Sayer 3,125 shares; Thomson 3,125; Dunscomb, it will be observed, was of the Smuggler No. Two party who had not been up to this time or up to the time of the Fulton Mining Company in any was associated with the J. C. Johnston title.

Some time subsequently in April, 1881, Seaver came into the same organization and received from that company 6,770 shares. This was of the first issue of 50,000 shares, it being an understanding then that the remaining 50,000 shares would be reserved for sale to raise a working capital. In the early part of the year 1881, in May or June, certain suits were begun in different Courts—some of them in this Court, and some of them in the District Court of Pitkin County, in which, apparently, the purpose was to put in issue the validity of these locations. These suits were begun by parties claiming under the Smuggler No. Two title—Mr. Acheson and persons claiming under him, perhaps under Seaver and Dunscomb; that is, persons to whom conveyances had been made by some of these parties of some interest in the location, and the Smuggler No. Two certificate. Not much was done in these suits, and in the early part of the year 1882 some settlement and adjustment was arrived at between the parties; and following that, in December, 1882, all of the suits were dismissed without trial in any way. By the terms of this settlement, Mr. Holden of Kansas City, who represented all of the parties claiming under the Smuggler No. Two location, received the 37,500 shares of the Fulton Mining Company stock, and

the remainder of the shares, that is, of the second issue, was divided amongst the original corporators, Seaver for the most part (?); perhaps there were some few shares sold that fell into the hands of the other parties.

The title remained in the Fulton Mining Company until July 5, 1886, and that company conveyed to W. J. Anderson, and, in June, 1887, Anderson conveyed to the Standard Mining Company, the defendant now owning the property. These conveyances were without consideration—the Standard Mining Company was a successor to the Fulton Mining Company in every sense, stockholders in the Fulton Mining Company becoming stockholders in the Standard Mining Company.

To return now to what seems to be an issue between the parties, and the way in which the case is presented here, it seems to have been understood that the question to be tried was whether the J. C. Johnston location was valid as against the Smuggler No. Two.

Mr. Thomson says in his written argument: "From the foregoing facts, and the other evidence in the case, it appears that the parties described in the Chatfield contract as claiming adversely an interest in the property, and against whom legal proceedings were proposed to be instituted, were the co-owners with Mr. Johnston in the 'Smuggler Two' claim, and that the interest claimed by them was that which they acquired in the ground by virtue of its location as the 'Smuggler Two' by them jointly with Johnston; the territory in both locations being substantially the same.

"Legal proceedings as contemplated by Chat-

field were never commenced by him, and his grantee, the Fulton Mining Company, settled all the adverse claims, some without suit and others after suit brought.

"Upon these facts, the question which now presents itself is, whether the proceedings mentioned in this Chatfield contract would have been successful if instituted. If it appears from the evidence in this case that Chatfield could not have prevailed in such proceedings, but must have suffered defeat, then, as the law does not require the doing of a useless act, he was under no obligation to institute them, his contract has not been violated and the complainant is entitled to no relief."

Upon that theory, nearly all the testimony in this case is directed to the question as to whether one or the other of these locations is valid.

In my judgment the Court is not called upon to consider or decide that question in any way whatever. That was a question, which by the terms of this agreement was to be determined in a suit to be brought by Mr. Chatfield against the parties claiming the Smuggler No. Two interest, whether each suits were or were not brought, are not matters to be considered here, unless it is alleged that such suits were brought, and that they resulted in the defeet of the Johnston title. Mr. Chatfield bound himself to maintain this title in suits to be brought by him for that purpose, or in a suit to be brought by him for that purpose, and he must adhere to the letter of his contract. The Court cannot be called upon in any proceedings of this kind to go into the inquiry which he was required to make, and maintain any suits to be by

him brought for that purpose. However, the title was maintained, if it was maintained; unless he was defeated in it by the Smuggler title he was bound to account to Johnston for this one-eighth; This is obvious in many ways; the question which should have been presented in any such suit as that would have been a question for a jury to decide upon all the evidence, and it may be said in view of the position occupied by Johnston in all these matters, in view of what was alleged in respect to the failure of the Acheson party to fulfill the terms of their agreement with him, in view of what is alleged as to the time and manner of the discovery of ore in place in the mine, and in view of the recognition accorded to the Johnston title after the conveyance by Johnston to Chatfield, two of the parties, Dunscomb and Seaver, having apparently abandoned the Smuggler title and come over to the Johnston title and fully recognized it, it must be conceded that that was a matter of some doubt. But, however that may be, whether it is an open question, or one which is clear upon the testimony exhibited here, I don't think the Court can be called upon to make any inquiry concerning that. The only question is whether Chatfield or his successor was able to maintain this title. He did maintain it by purchase, it is true, by compromise with the adverse party; the Johnston title went to patent, was acquired by the Fulton Mining Company as Chatfield's grantee and is still held by the defendant, the Standard Mining Company, as the valid and subsisting title to this claim; so that no discussion arises as to the validity of these several locations.

In the view which I have taken of the matter, as it seems to me on what is presented in this agreement, the only question left is as to whether the present owner of the property, the Standard Mining Company, is a purchaser with notice of Johnston's claim under this agreement. Counsel for the defendant entered into an agreement and stipulation to the effect that the evidence was sufficient to affect the Standard Mining Company's notice. After the case was submitted, I received from the President of the Standard Mining Company, a communication in which this was denied, and the authority of counsel to make such an agreement and stipulation, was also denied; from that, I felt it my duty to look into the testimony, to determine whether further proof upon that subject should be called for, and, upon that, I arrived at the conclusion that the evidence was full and clear; that, as matter of law, the Standard Mining Company must be taken to have received this property with notice of Johnston's interest in it. In the first place, as to the Fulton Mining Company, I think it may be assumed that all of the persons forming that corporation were affected with notice of his interest. Certainly this was true as to four of them—of Chatfield, the grantee, and the person who made it; Wilson, who was associated with him in the conveyance, and who was present during some part of the proceeding, and fully advised of all that took place at that time; Mr. Thomson and Mr. Sayer, who were acting as Chatfield's attorneys. With these four, except Mr. Dunscomb, who was not present during these times—and there is nothing to show that he then had had notice of it, ex-

cept that immediately or very soon after this title was received by Chatfield, and when it was proposed to form a company for maintaining this title, he, one of the Smuggler No. Two parties, associated himself with the others in forming this company, and apparently with the purpose and intent to maintain this Johnston title against the prior location of the Smuggler No. Two. I think upon that it may be assumed that he also had notice of all the circumstances that affected that title; and so it must be said that all the persons who formed the Fulton Mining Company had notice of it; and, if the company was thus notified, all who subsequently became members of the corporation would be affected with notice. It is incident to a corporation, that once affected with notice, while it exists, it shall be assumed that it has that notice throughout its existence, whoever the individual shareholders may be. If new stockholders take the place of those who were first connected with it, they are affected with notice as much as those who were in the organization at the time that notice came to the corporation. And as to the conveyances to Anderson, and by him to the Standard Mining Company, they were without consideration, and the Standard Mining Company was organized by the stockholders, being the Fulton Mining Company, and apparently with a view to become the successor in interest to the Fulton Mining Company and the holder of this title. In that view and under such circumstances, it is not in the position of a purchaser for value; it stands in the same position precisely, affected in all ways

by this sale, as its predecessor, the Fulton Mining Company.

It will be observed that in the bill of complaint and in much of the testimony which is given in this cause, the complainant has claimed a larger interest than is specified in this agreement with Chatfield. He says, in testimony, that if this title should not be contested, that he would be entitled to his half interest back again; that is to say, the understanding was that Thomson and Sayer were to have an eighth for defending the title, and if they did nothing in defense of the title, then that he would be entitled to have that also returned to him. Upon that, as upon other matters in which the testimony varies from the written instrument, it is hardly necessary to say that nothing can be claimed except according to the terms of the writing itself.

Upon these considerations I am constrained to render a decree in favor of the complainant in this suit for one-eighth interest, and for the proceeds of the property, of course deducting such expenses as are mentioned in this agreement as chargeable to Mr. Johnston. Of course, this decree must go against the parties who were in possession of the property at the various times, according to the dates of their conveyances, one having been owner at one time, and another at another.

If the parties can come to an agreement about the terms of such a decree, I shall feel it my duty to sign it.

Mr. Thomson: We will take all proper appellate orders when the decree is settled on.

The Court: Yes, sir, just enter them in the decree in respect to the appeal and the like.

I suppose that this transcript is substantially what was said at the time of the first decision, no formal opinion having then been drawn up or filed.

I consent to its use by counsel in any way that may be desired, desiring only to say that it has not been revised, and allowance must be made for clerical errors and omissions.

Signed in Chambers at Denver, Colo., this 29th day of October, 1891.

MOSES HALLETT,
District Judge.

OPINION ON REHEARING.

J. C. JOHNSTON,
v.
THE STANDARD M'G CO., *et al.*

HALLETT, J.: This bill was filed October 7, 1887, seven years after the transactions narrated in it, or if it is supposed that the cause of action arose upon the settlement made by the Fulton Mining Company with the parties claiming the Smuggler No. Two title, the bill was filed more than five years after the event. Whether this was in good time to secure the aid of a Court of equity in a cause of this nature was not presented or considered at the first hearing and is now to be determined. The Chatfield agreement of October 12, 1880, was to become effectual "in the event of the party of the first part, prevailing and succeeded in certain legal proceedings about to be instituted and commenced by the party of the first part against persons who

claim adversely to him." The issue thus to be contested by Chatfield was between the J. C. Johnston and Smuggler No. Two locations, both of which were made by complainant, and, of course, he would be the principal witness in support of the Johnston title in any suit that might be brought as required by the agreement. Conceding that the entire burden of the litigation was to be carried by Chatfield, complainant's relations to it was such as to call for strict attention to all that was done.

As no progress could be made without his testimony, it may be assumed that he was at all times ready and anxious to ascertain what was being done by Chatfield toward acquiring title to the property. From his own testimony it appears that he was impressed with this view of his relations to the property, for he says that in May, 1881, he went to the office of Thomson & Sayer in Leadville "and asked how the case was, and he said it was compromised, and I told him I would like to take the papers to copy them and he gave them to me, and I took the papers and looked them over and went down to have them copied and found out it would cost too much and so didn't do it,

Q. What papers? A. Contract between Chatfield and I, Crittenden and Adair and I, and a copy of the original grub-stake contract between Dunscomb, Seaver, and I. I suppose there was a contract between Chatfield and Thomson and Sayer, and I wanted to copy that more than anything else. I don't think that was among the papers. That he wanted "the papers" for the purpose of asserting his claim to the mine under the Chatfield agreement seems clear enough, and no sufficient reason

is assigned for not doing so within some reasonable time thereafter.

It is true, as his counsel says, that the compromise was not then complete. but it was in progress. The property had been conveyed to The Fulton Mining Company. Some of the Smuggler No. Two people had come into the Fulton Company, and efforts were being made to bring in others, and this was accomplished a year later. The way in which the compromise was carried on was to give the stock of the Fulton Company to the Smuggler claimants, according to their respective interests. Any proper assertion to his claim to the property pending the compromise would have been effectual to secure his interest without injuring the other stockholders of the company.

In the cross-examination of Chatfield by complainant's counsel he testified as follows:

Q. What demands, if any, did Mr. Johnston ever make upon you for his interest in that property? A. I think in 1882, at Littleton, he spoke to me and said he thought he ought to be entitled to his interest in the property; that we should have gone on and contested that case.

Q. What did you say to him? A. If I recollect right, I told him we found we had no shadow of a ghost to maintain his case, and it was divided up among the stockholders; in other words, among the claimants, Dunscomb, Seaver, Acheson and Holden.

Q. Then this eighth interest which he was to have was divided up among them? A. I think that was what I told him at that time in Littleton.

There is some dispute whether this conversa-

tion was before complainant went to Wood River in 1882, or after his return, in the following year. Whatever the date may be it was after the final settlement, in April, 1882, although, probably, the agreement was not then entered of record in the way of dismissing suits and issuing stock of the Fulton Company. Here, again, complainant was fully informed of the settlement of the controversy, and nothing more was necessary to enable him to maintain suit for his interest. It is said that he understood that suit could not be brought until patent was obtained; that Chatfield constantly informed complainant that the patent had not been issued, and thereby he was misled until in 1885 he learned the truth and brought the first suit in this Court. If any such belief was entertained there was nothing in the agreement to support it; on the contrary, Chatfield agreed to convey "upon so acquiring the title, legal and equitable, to the said mine by means of the legal proceedings so about to be commenced." With the compromise of the "legal proceedings" mentioned in the agreement complainant became entitled to his interest in the property, and the patent was of no importance to him.

As showing diligence in asserting his claim, complainant's suit of 1885 in this Court is of little weight. It is admitted that it was misconceived in all material aspects, and it was between citizens of the same state, and therefore not within the jurisdiction of the Court. It was kept on the docket for eleven months, during which it was not moved at all, and then it was voluntarily abandoned. All the evidence tends to

show that with full knowledge of his position and relation to the property no serious effort was made by the complainant to enforce the Chatfield agreement for some five or six years, during which work on the property was carried on by the Fulton and Standard Mining Companies at great expense, and the value of the property was established. Under the circumstances he was bound to proceed in the enforcement of his claim within some reasonable time after his cause of action accrued. The property was held by a corporation, the shares of which, in the ordinary course of business, would fall into the hands of innocent purchasers. It was not known to be valuable until, by development and the expenditure of a large amount of money, it was shown to be so. The work of developing was carried on for several years, first by the Fulton Company and afterwards by the Standard Company, while complainant stood by apparently waiting for the result. Where property is of fluctuating value and work requiring courage and energy and the expenditure of money is going on, he who would assert ownership in it must do so promptly and share in the hazards as well as the profits of the enterprise. Twin Lick Oil Company vs. Marbury, 91 U. S., 587. Complainant failed in such diligence for more than five years and until the great value of the property was fully demonstrated by the defendants claiming adversely. As to the present owner of the property, the Standard Mining Company, the bill must be dismissed.

If complainant wishes to have a decree against Chatfield, several questions arise which have not been discussed at the bar. As whether, upon dis-

missing the bill as to a citizen of another State the Court may proceed to determine matters in issue between citizens of the same State. At what time did Chatfield's liability arise and what does the evidence show as to the value of the property at that time? Hitherto argument has been confined to the issue between complainant and the Standard Mining Company. If the case is to be pressed against Chatfield it is obvious that further argument will be necessary on that issue.

UNITED STATES OF AMERICA.
DISTRICT OF COLORADO. } ss.

In the Circuit Court of the United States within and for said District.

J. C. JOHNSTON,
Complainant,
vs.
THE STANDARD MINING COMPANY, *et al.*,
Defendants.
} *In Chancery.*

Now comes the complainant in the above cause and prays for a rehearing thereof on the question of laches upon the following grounds, to wit:

I.

In its last opinion the Court assumes that complainant's cause of action accrued at the time of the settlement of the controversy and suits between the Smuggler Two and J. C. Johnston parties in 1882.

Complainant claims (1) that his cause of action did not arise at that time nor until long after; (2) that if it did arise then, complainant was ignorant of his rights, hence that in neither case has he been guilty of laches.

II.

The Court now says there was nothing in the agreement to support complainant's belief and understanding that he was not entitled to his interest until after patent was obtained, but in its first opinion the Court held otherwise, according to the understanding of counsel on both sides, the language of the Court in construing the contract being as follows: "It seems to have been understood at the time this deed and this agreement were made that Chatfield or some Company to be organized by him for owning and managing this property should obtain a patent for this claim from the Government of the United States, and upon all the evidence there is no reasonable ground to doubt that the consideration of this agreement was that this title should be maintained, the J. C. Johnston title, in the Courts and elsewhere, if that could be done, and if successful in that Johnston was to have conveyed to him one-eighth part of it."

And counsel for defendant (Mr. Thomson) claimed on the application for rehearing that this construction of the contract—i. e., the maintaining of the title by patent proceedings and its effect upon the rights of the parties—had not been argued, and asked (orally) for a rehearing upon this ground.

This question has not been argued yet, but it has been assumed by counsel for complainants, as we suppose by the Court, that we were entitled to this construction of the contract, for the following reasons, among others:

I.

It is the construction that the parties themselves placed upon the contract by their acts. The only legal proceedings that Chatfield commenced was the application for a patent. He brought no suit, and the suits that were brought and compromised were suits against Chatfield and his grantee, the Fulton Mining Company, and therefore not within the letter of the contract.

II.

Chatfield, Sayer and complainant have all testified that an application for patent was contemplated by the agreement, and there is no conflict of testimony on this point.

III.

If the legal proceedings mentioned in the contract did not mean an application for patent, then complainant's cause of action has not yet accrued under the contract, for the reason that Chatfield has never commenced any other proceedings, and if the legal proceedings meant or contemplated an application for patent, then his right of action did not accrue until the issuance of patent.

IV.

The interlocutory decree contains the following finding: "It appears from the evidence that

the defendant, The Fulton Mining Company, as grantee of the defendant, Isaac W. Chatfield, perfected and established the title to the said J. C. Johnston lode by procuring a United States patent therefore bearing date the 21st day of February, 1884."

V.

1. The testimony of Chatfield concerning the alleged interview of 1882 is false on its face, for it was not true that Johnston's interest had been divided up among the adverse claimants. His interest had been appropriated by Chatfield, Thomson, Sayer, Dunscomb and Wilson.

2. Assuming the testimony to be true, complainant had no cause of action and he was therefore excused from bringing suit until he learned it to be false.

3. The interview is denied by Johnston.

4. The vague, evasive, and unsatisfactory character of Chatfield's entire testimony entitles it to very little weight.

VI.

Complainant's suit of 1885, though brought in the wrong Court and though misconceived in some respects, was yet upon the same cause of action. The contract was set out *in haec verba;* the same relief was asked as now, with additional relief against the stock of the Fulton Mining Company. The fact that it was pending on demurrer for nine months does not constitute laches.

VII.

The argument that "the property was held by a corporation, the shares of which in the ordinary course of business would fall into the hands of innocent purchasers" is answered by the Court's first opinion, which holds: "It is incident to a corporation that once affected with notice while it exists it shall be assumed that it has that notice throughout it existence, whoever the individual shareholders may be. If new shareholders take the place of those who were first connected with it they are affected with notice as much as those who were in the organization at the time that notice came to the corporation."

VIII.

The defense of laches was not made at all in the trial. It was not assigned on the petition for rehearing. It was not mentioned or thought of until after the rehearing was granted upon other grounds, namely, the alleged bad faith of one of the counsel, which proved to be a mere pretext, and has not been mentioned or heard of since. The defense of laches therefore came too late.

IX.

The Court intimates that complainant may be entitled to a decree against Chatfield. If so, he is entitled to a decree against the Standard Mining Company. Nothing is better settled than that a purchaser with notice of a trust or without consideration stands in the shoes of the trustees from whom he takes title, and may be compelled to perform the trust, and the Standard Company is in that situation.

X.

The charge of laches on account of the large expenditures of the defendant companies upon a property of doubtful and fluctuating value is also refuted by the fact that the agreement provides for the development of the property by Chatfield, and that the complainant should not be called upon to contribute until after receiving back his interest. The agreement provides "that the party of the second part (Johnston) for and in consideration of the covenants and agreements to be kept and performed as hereinbefore mentioned, doth covenant and agree to and with the party of the first part, upon having or receiving the title—an undivided one-eighth interest in and to the said lode—to pay an undivided one-eighth part of the expenses which shall accrue in the development and opening of the said above-described lode."

XI.

Assuming that complainant was entitled to his interest upon the compromise of the suits in 1882, it was the duty of his trustee to deed him his interest and not his duty to demand it.

Until demand and refusal there was privity between them, and no cause of action existed. The demand and refusal did not occur until in 1885, immediately before the bringing of the first suit.

Respectfully submitted,

HUGH BUTLER and
WILSON & STIMSON,
Solicitors for Complainant.

TABLE SHOWING INTERESTS OF ADVERSE CLAIMANTS IN SMUGGLER TWO AND J. C. JOHNSTON CLAIMS, AND BASIS OF SETTLEMENTS.

EDWARD DUNSCOMB.

IN SMUGGLER TWO, 1-4 (under location) minus 1-48 (share of deed to Browne, July 6, 1880,) equal 11-48.

IN J. C. JOHNSTON, 1-6 (share of deed Crittenden and Adair to Acheson, August 10, 1880,) minus 1-48 (share of deed to Browne) equal 7-48 of 100,000 (capital stock of Fulton Mining Company), equal *14,583 1-3 shares which he received in settlement.*

(But Dunscomb's share of the deed from Crittenden and Adair to Acheson was never deeded to him, and the trust was not declared, and when Acheson learned that Dunscomb, as President of the Fulton Mining Company, claimed title under the second fraudulent deed from Crittenden and Adair to the Fulton Mining Company (December 9, 1880, (ackd.), Dunscomb was treated accordingly and his interest under the first deed was denied, and was claimed by Acheson and his associates).

JAMES E. SEAVER,

IN SMUGGLER TWO, 1-4 (under location) minus 1-48 (share of deed to Browne) minus 1-16 (share of Seaver's deed to Oburn, October 8, 1880—Acheson must have stood half of this, see his testi-

mony and Seaver's) minus 1-96 (share of deed to O. H. Dean) minus 1-96 (deed to Jones, March, 1881) minus 1-96 (deed to Underwood, March, 1881). Equal 13-96 of 100,000 equal 13,540, divided by two equal *6770 shares received by Seaver.* —(Dunscomb represented to Seaver that the company was issuing only one-half of the stock to shareholders and that he would receive balance later.) (The three last mentioned deeds do not appear on the abstract. Dean's was not recorded at all, but is proven by testimony of Holden and Acheson and the issue of stock to Dean in settlement. The deeds to Jones and Underwood were recorded in Gunnison County, and are in evidence.)

Seaver had precisely the same interest in the J. C. Johnston that he had in the Smuggler Two by deed from Acheson shown as follows:

In J. C. Johnston 5-32 (deed from Acheson, January 31, 1881, consideration one dollar) minus 1-96 (deed to Jones) minus 1-96 (deed to Underwood) equal 13-96 of 100,000 equal 13,540, divided by two, *equal 6770 as before.* (Acheson deeded the 5-32 to Seaver so as to give him the same legal interest in the J. C. Johnston that he owned in the Smuggler Two. This he could not have done except by repudiating Dunscomb's interest under the deed from Crittenden and Adair to Acheson.)

ACHESON et. al. (Represented by Holden.)

In Smuggler Two, *Acheson 1-4* (under location) minus 1-48 (share of deed to Browne) minus 1-16 (share of Seaver's deed to Oburn, see testimony) minus 1-96 (share of deed to Dean) *equal 5-32. 5-32* (*Acheson*) plus 1-16 (Browne), plus 1-8

(Oburn), plus 1-32 (Dean), plus 1-96 (Jones), plus 1-96 (Underwood), plus 13-192 (Seaver) *equal 89-192 or within 1-27 (about) of 1-2.*

(Mr. Holden testifies that Mr. Seaver was perhaps co-operating, to some extent, with him, Holden, in the prosecution of the suits, and it appears that Seaver was made a party plaintiff in the adverse suit, Smuggler Two vs. the J. C. Johnston, by an amended bill filed, apparently, for that purpose, and he and his wife were parties plaintiff in the adverse suit of Smuggler Two vs. Chatfield lode—fol. 457—but Holden states that Seaver stood in an independent attitude—fol. 671—and that he, Holden, represented and controlled only the other interests in the litigation and settlement, and that these interests aggregated just *3-8*, which was the amount of stock in the company issued to Holden in settlement. Mr. Seaver testifies that he had nothing to do with the suits and never authorized any suit—fol. 703. However, if we deduct Seaver's remaining interest, 13-192, from the above computation, we still have *38-96, or 2-96 more than the amount received* by Holden and the parties represented by him.)

In J. C. Johnston, *Acheson 1-2* (deed from Crittenden and Adair) minus 1-32 (deed to Dean), minus 5-32 (deed to Seaver) equal 10-32. 10-32 (Acheson) plus 1-32 (Dean), plus 1-96 (Jones), plus 1-96 (Underwood), plus 13-192 (Seaver) *equal 81-192, equal very nearly 3-7*, or, omitting the Seaver interest (13-192), *equal 35-96, or within 1-96 of 3-8.*

The Seaver interest was, of course, the amount still due him on settlement with Dunscomb—that is,

6770 shares, which would be 13-192 of 100,000. *Query:* Who got this Seaver stock, if Holden did not? Seaver never got it. It may be claimed that Seaver was paid a money consideration for his interest, and such was the case long afterwards, when it was found that his title in the J. C. Johnston was still outstanding, no deed ever having been taken from him until October 12, 1886, when Seaver and wife deeded all their interest in the J. C. Johnston and Smuggler Two to Frank N. Chick for an expressed consideration of $2,500. Chick is a stockholder and officer in the defendant, the Standard Mining Company.

So that it would appear that Mr. Holden and his friends were claiming considerably more than 3-8 of the property, certainly more than 3-8 in the Smuggler Two, but even eliminating the Seaver interest, *Holden's parties owned within 1-96 of the legal title of the J. C. Johnston held under mesne conveyances directly from Crittenden and Adair, locators in the J. C. Johnston,* and this interest of course they were entitled to recover.

As already stated, *the additional 1-96,* after eliminating Seaver, which Holden received, may perhaps be accounted for by the fact that the defendants in those suits had no interest in the Kansas City claim, and hence, if they lost the suit, of the Kansas City against the Chatfield, they would have nothing in the property covered by those locations; in the Kansas City the Acheson party were the undisputed owners of one-half under the grub-stake contract (omitting Dunscomb's interest) *and Johnston, the complainant, owned the other fourth.* Plaintiffs in that suit made Johnston

a defendant for the alleged reason that he refused to join with the plaintiffs, and Messrs. Thomson & Sayer *appeared as attorneys for Johnston* and the other defendants, and Johnston's interest was divided up in some way between the plaintiffs and defendants in that suit. Here is an admitted fraud upon him, admitted by all parties. Hence, it appears that Johnston is now a fourth owner in the Chatfield location, formerly the Kansas City. The defendants in this case have pleaded that they could make no defense to those old suits; hence, when the plaintiffs prevailed in that suit, they must have recovered a fourth interest for Johnston. The complainant has claimed the same interest in the Chatfield that he owns in the Johnston, for the reason, as alleged, that it is one and the same vein, and the Johnston has the apex, and this is admitted and established by the proofs. It now appears that Johnston has another and perhaps a stronger ground of recovery against the Chatfield claim than that alleged in the bill, and under the stipulation to amend in accordance with the proofs, we ask that this proof be treated as incorporated in the bill of complaint.

We claim that *these settlements show that there was no real controversy or litigation over Johnston's fourth interest held by the Fulton Mining Company as grantee of Chatfield, and that the real controversy was between the claimants under the first deed from Crittenden and Adair to Acheson and the claimants, viz., the Fulton Mining Company under the second and fraudulent deed from Crittenden and Adair to the Fulton Mining Company.* Of course, the defendants in that controversy could make no defense,

and whatever portion of Johnston's 1-4 interest taken in trust by Chatfield and then deeded by Chatfield to the Fulton Mining Company, was sacrificed by Chatfield and his associates, was due to frauds and blunders which they perpetrated.

TABLE SHOWING SETTLEMENTS IN STOCK AND AMOUNT OF STOCK RETAINED BY ORIGINAL CLAIMANTS UNDER DEED FROM JOHNSTON TO CHATFIELD:

First settlement with Dunscomb, 14,583 1-3 shares, December, 1880.

Settlement with Seaver, April, 1881, 6,770 shares. (This was half his interest. See other table.)

Settlement with Acheson and other adverse claimants represented by Holden, April, 1882, 37,500 shares.

Dunscomb	14,583 1-3	shares.
Seaver	6,770	shares.
Acheson (Holden et. al.)	37,500	shares.
Total	58,853 1-3	shares.
Leaves	41 146 2-3	shares.

(Shares saved of the one half interest deeded by Johnston to Chatfield.)

How it happened that any portion of this half interest was given up appears from the other table.

The above calculation does not allow for the balance of stock due Seaver, viz: 6,770 shares, and it is impossible to say whether this was taken by Holden and his parties or kept by Chatfield and other incorporators of the Fulton Company. From the fact that Holden, or rather Mr. Chick for the Standard Company, afterwards paid Seaver money

for his interest, it would seem that Holden and his friends got this Seaver stock.

The 41,146 2-3 shares was issued to Chatfield and his associates as follows: First issue of stock January 10, 1881,

To Chatfield	12,500 shares.
To Wilson	12,500 shares.
To Thomson and Sayer	6,250
To same parties (and Dunscomb) in same proportions as under original issue	9,896 2-3
	41,146 2-3

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Case No. 13709.

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JAMES H. McKENNEY,
CLERK.

IN

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1892.

Term No. 133.

JOHN C. JOHNSTON,
Appellant,
vs.
THE STANDARD MINING COMPANY, OF KANSAS CITY,
Appellee.

Appeal from the Circuit Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT FOR APPELLANT.

HUGH BUTLER,
Counsel for Appellant.

C. J. KELLY, PRINTER, DENVER.

Case No. 13709.

IN

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1892.

Term No. 133.

JOHN C. JOHNSTON, *Appellant,* vs. THE STANDARD MINING COMPANY, OF KANSAS CITY, *Appellee.*	*Appeal from the Circuit Court of the United States for the District of Colorado.*

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT.

This suit was originally commenced in the District Court of Pitkin County, Colorado, against the Standard Mining Company of Kansas City, Isaac W. Chatfield, Charles I. Thomson, Daniel Sayer, and the Fulton Mining Company and

others, defendants. The suit was removed to the Circuit Court of the United States for the District of Colorado, on the petition of the Standard Mining Company, alleging that it was a non-resident corporation and that there was a separable controversy as to it. A motion was made to remand, but the motion was overruled and the Circuit Court retained jurisdiction.

The complaint was framed under the civil code in force in Colorado and in accordance with the rules and practice of the State Courts. The facts on which the complaint was founded and which appeared in evidence were, substantially:

That J. C. Johnston, the complainant, was a miner and prospector of considerable experience at the time that mineral discoveries were made in the vicinity of Aspen, Colo. In the fall of the year 1879 he had prospected in that vicinity, and had partially discovered and located several mining claims of promising value. During the winter of 1879 and 1880, through the introduction of one Rouze, an old friend, he met Acheson, Seaver and Dunscomb, who had recently come from Missouri and Kansas to Colorado. Acheson, Seaver and Dunscomb represented that they were possessed of considerable means and able and anxious to engage in the business of prospecting and mining. Johnston informed them of the discoveries and locations which he had made in the new mining camp in the vicinity of Aspen, and they offered to join him in completing the work of discovery and development. They represented that they were able and willing to expend the sum of $20,000 in

the venture, and would spend $5,000 of that amount during the first year.

Influenced by these representations, Johnston entered into a contract with them whereby Acheson, Dunscomb and Seaver agreed to pay to Johnston and Rouze the sum of $275 for supplies to be purchased, and to pay a further sum of $37.50 per month to Johnston and Rouze each, and to furnish at all times sufficient money when needed for the purpose of completing the discoveries and development work required to perfect the discovery and location of the several claims. In return, Acheson and Dunscomb were to be entitled to an undivided one-half interest in all discoveries and locations made under the contract, the other one-half to be owned by Johnston and Rouze.

Soon after the signing of the contract, which was made at Denver, Johnston returned to the mining camp, and there did further preliminary work to protect the claims which he expected to further develop and to locate as early as practicable in the spring following.

The section of country in which the mines were discovered was at that time remote and difficult of access. It was separated from Leadville, which at that time was a new and busy camp, by the Continental Divide, and was still further distant from the town of Buena Vista, on the line of the Denver & Rio Grande Railway, and it could be reached only by resort to the most primitive method of travel and conveyance.

Johnston returned to Denver, and in the April following procured some supplies at Denver, which were shipped by rail to Buena Vista. He

was to be accompanied by his partners, Rouze and Seaver, and to be joined later by Dunscomb and Acheson. At Buena Vista Rouze abandoned the venture, and thereupon it was agreed that Johnston should proceed to carry out the contract and should receive the additional sum of $37.50 per month, which Rouze was to receive if he continued to work under the contract, and the other parties, Acheson, Seaver and Dunscomb, were to receive the one-fourth interest reserved in the original contract for Rouze.

Johnston, with the outfit then furnished, started for the new camp accompanied by Seaver, but the latter was scared by a mountain lion and returned. Johnston, however, proceeded alone and safely reached the place of his former operations, and he commenced work at once. Some time afterward, Seaver and Dunscomb appeared, but Seaver soon became ill, and was taken back by his partner and friend, Dunscomb, to Buena Vista. At this time, the supplies had nearly given out and Dunscomb promised to send fresh supplies from Buena Vista as soon as practicable. For that purpose, he took with him all of the pack animals, except a horse which belonged to Johnston. The supplies were not sent as promised. A small amount was obtained, but much later in time and much less in quantity than was needed and promised. Johnston remained at the camp and continued the work of prospecting and developing.

Early in July Acheson visited Aspen, apparently for the purpose of paying the workmen and settling the indebtedness contracted up to that time. Before carrying out his intention, he fell

into a game of chance and lost the money which was intended for the payment of the men, and he returned without having aided or relieved his partner, Johnston, in his effort to continue the work and complete the locations. Meanwhile, Johnston remained constantly at his post of duty, inducing the men to work, making promises and obtaining credit as best he could, relying upon the hope that Acheson, Seaver and Dunscomb, or some of them, would soon return with sufficient money for the payment of all debts, for the purchase of supplies, and for the speedy pushing of development work. In this he was disappointed. After the visit of Acheson, when he lost his money at the gaming table, Johnston was left wholly without support, and even without the promise of support, by his fellows in the enterprise, and it was not until about the 1st of August he became convinced that his partners had abandoned him and the enterprise as well.

Up to this time, Acheson, Seaver and Dunscomb had furnished but little money, a few hundred dollars, not reaching a thousand, and Johnston had remained constantly at work from the early part of April. But for his industry, diligence and constant presence, the whole venture would have been a failure to all concerned. He alone, of all that were engaged in it, was the one who steadfastly, courageously and industriously persisted in the effort to develop and locate the claims which he had first traced out in the fall of the preceding year. In July he had trouble with the owner of a conflicting location, bearing the significant name "Defiance," and in anticipation

of physical force and violence, provided himself with a gun, with which he accidentally shot himself in the foot. About the 1st of August, he was wholly without money, and he had exhausted the little credit given him. Indebted to the men for their wages, to Crittenden and Adair for the supplies they had furnished, abandoned as, he supposed, by his partners, he was compelled to accept relief from any source and almost on any terms offered.

Until about the middle of July no lode or vein had been discovered in the sense which entitled him to make any valid location. About the 10th of June, a claim was staked out named the Smuggler Two, and a location certificate was also prepared and signed and taken by Dunscomb and Seaver to be recorded in the Recorder's office of Gunnison County, which at that time included the premises in question. The vein was not discovered in place, however, until about the middle of July, and about the 1st of August, Acheson, Seaver and Dunscomb still failing to appear, Johnston unable to proceed further in the enterprise without assistance, entered into a contract or arrangement with Crittenden and Adair. By its terms, the ground was to be again located by virtue of the discovery of mineral in place, which was made about the middle of July, and it was so staked and located under the name of the J. C. Johnston lode. Crittenden and Adair were to cancel their claim against Johnston up to that date, were to advance sufficient money for the payment of wages due the men, and were also to reimburse Johnston's former partners, namely, Acheson, Seaver and Dunscomb, for the moneys

which they had expended in the enterprise, and were to pay Johnston the sum of $1,000 in cash. In return, they were to become entitled to an undivided one-half, the other half to belong to Johnston.

The ground was accordingly staked and located as the J. C. Johnston claim, the location conforming mainly to the location theretofore made under the name of the Smuggler Two, and a certificate of location in the names of Crittenden and Adair and Johnston was prepared and signed, ready to be sent to the Recorder's office for record. The parties proceeded to Leadville for the purpose of completing the transaction. Before leaving, Johnston left the mine in charge of his workmen. Immediately after the departure of Johnston and his new associates for Leadville, Acheson again appeared on the scene. Learning that the ground had been located anew under the name of the J. C. Johnston lode, and that Crittenden and Adair had become connected with the new location, he followed them immediately to Leadville and arrived there before the new arrangement between Johnston and Crittenden and Adair was fully consummated. There he met the parties, and, after some negotiation, effected a purchase of the undivided half from Crittenden and Adair, by repaying them all the money which they had expended and something in addition, and took from Crittenden and Adair a deed conveying their undivided half interest in the J. C. Johnston lode. It seems that he was quite anxious also to regain the other undivided one-fourth which would have belonged to him and his partners had the contract between them and Johns-

ton been carried out on their part. At this time, under the contract, if still in force, Acheson, Seaver and Dunscomb were indebted to Johnston in the sum of $500, or thereabouts, for his services. He had received nothing for his labor after his arrival at Aspen, about the 1st of April. A little money had been paid him on one occasion by Acheson, but that and more had been expended by Johnston in prosecuting the work, so that, practically, he had received absolutely nothing for his services for the four months intervening between the commencement of the work and the interview at Leadville. Johnston offered to convey the other undivided fourth if Acheson would pay the money due under the contract, which was stated to be $525. Acheson requested him to execute a quit-claim deed at that time, promising to pay the sum mentioned, but Johnston declined to make the deed until he got the money. Thereupon, Acheson paid Johnston the sum of $25, and agreed to pay $500 within a short time to Johnston, at Littleton, after his (Acheson's) return from Aspen. On the same occasion, he paid to White, one of the work men, at Leadville, the sum of $100 on account of $150, promising to pay the remainder to him at Littleton at the same time.

Johnston and White returned to Littleton, but Acheson never appeared and never redeemed his promise. Had Acheson paid the money according to promise, there would have been no further controversy, and it is out of this last default upon his part that the controversy originated.

In the trial below, it was contended, by counsel for the Standard Mining Company that the Ache-

son, Dunscomb and Seaver party were invested with a three-fourths ownership by virtue of the first location under the name of the Smuggler Two, and that the right and title so acquired could not be divested merely by virtue of any default, before or after, on their part, in respect to the agreement. Had Johnston, Dunscomb and Seaver taken this position at the start and maintained it throughout, there would have been some plausibility in the argument, but certainly no equity in the contention. But we deny the soundness of the argument. This suggests an inquiry into the nature of the contract and the rights of the several parties under it at the time of the second location, under the name of the "J. C. Johnston," by Johnston, Crittenden and Adair.

At the time the contract was entered into, there was no property in existence to which any title could attach. It was a contract which looked forward to the creation as well as the acquisition of property. It dealt with something not then resting in the domain of fact, but in the region of possibilities and probabilities. It was known that there was a section of the public domain situate upon a mineral belt, then unappropriated, upon which all citizens of the United States had the right to explore and prospect for the discovery of veins and valuable minerals, and by such discovery and compliance with the laws in respect thereto, to acquire property. It has been held that such a contract need not be in writing (Murley vs. Ennis, 2 Colo., 300), though followed by the discovery of a lode and the creation and acquisition of a mining claim. It follows from the nature of the con-

tract that all the conditions in their nature are conditions precedent. The substance of the agreement on the part of Acheson, Seaver and Dunscomb was that if they performed their part by furnishing the money and supplies required, they would be entitled to a half interest in any lodes that might be discovered and located under that arrangement. The important thing was that money in sufficient quantity not only should be furnished, but should be furnished promptly at the time required.

In no other business or undertaking, where there is an agreement to furnish money, is time from the nature of things, so much the essence of the contract as in cases like this. Diligence as well as industry, courage and enterprise is an important factor. It often happens that there is a race between different prospectors at work in different places in the search for the first legal discovery of a vein in place shown by outcroppings or indications which incite and stimulate the endeavor of the prospector to discover a lode.

The venture in this case was not confined to the single discovery of a lode or vein, but it contemplated completing the discovery and development required for a group of lodes in the same vicinity. When Johnston dealt with Acheson, Seaver and Dunscomb, he was not seeking merely for employment as a day laborer or even as a common miner. He was inspired by a different purpose. He hoped by the union of his own skill, experience and energy as a prospector and miner, with the capital of others, to discover and locate a number of lodes,

one or more of which, in all probability, would have considerable value.

The money which he was to receive under the contract was an inconsiderable sum, certainly insufficient to compensate him even as a miner working for wages by the day. The evidence shows that miners' wages in that camp at that time were from $4 to $5 per day. In the first instance, Johnston was only to receive $37.50 per month, and even when he assumed the additional burdens and responsibilities imposed upon him by the retirement of his partner, Rouze, he was to receive only an additional $37.50 per month, which, rating the average month at thirty days per month, is only $2.50 per day. Ordinarily, Sundays are excluded in the computation of a month's wages, but as is well known, in such camps the prospector and miner work on Sundays as well as on other days, and diligence and attention were as much necessary on Sunday as any other day of the week.

To say that, although Johnston had performed on his part as fully as circumstances and the co-operation of his partners would permit, his part of the contract, showing perfect good faith on his part, and an honest attempt to carry out the contract, and that, although his partners, from the beginning, had failed in any one respect wholly to comply with the obligations of their contract, and they should nevertheless acquire equal right, is to announce a harsh doctrine. There is no equity in such a claim, and the contract should not be so construed as thus to excuse, and, in fact, reward

the willful and inexcusable defaults upon the part of Acheson, Seaver and Dunscomb.

According to their theory, although they advanced but a few hundred dollars instead of the thousands which they represented themselves as possessing and which they were ready to embark in the enterprise, they would be entitled to an interest in the property discovered and acquired precisely as if they had fully and honestly carried out their part of the agreement. Nor did they, at any later period, undertake to strengthen the equity of such claim by offering to do what they had neglected to do before. It appears, beyond question, from the evidence, that at the time of the negotiation at Leadville between Acheson and Crittenden and Adair and between Acheson and Johnston, they were in default and that they were indebted to Johnston under the contract in a considerable sum, and also to other people, and these debts have not yet been discharged.

As before noticed, if Acheson, when he learned of the second location under the name of the J. C. Johnston, still insisted upon all of the alleged rights under the contract, and had offered to pay Johnston the sums then due him for his labor, services and advances, and had offered to pay the other indebtedness existing, and had Johnston refused to accept, there would be some apparent merit in their claim to the one-fourth originally intended for Rouze, but this claim was not made, or if made, was soon abandoned, because all the evidence clearly shows that from that day the property was recognized by Acheson and his

partners under the new name of the J. C. Johnston and not under the name of the Smuggler Two.

According to the testimony of Johnston, it appears that Acheson, in the early stages of the negotiations between him and Crittenden and Adair and himself and Johnston, claimed that the Smuggler Two location was valid, and that the second location under the name of Johnston was invalid; but later, and after he had effected a satisfactory arrangement with Crittenden and Adair, he acknowledged to Johnston that Johnston was right in the course which he had taken. This was followed by the agreement on the part of Acheson to pay to Johnston the sum of $525. Johnston, on his part, promised to make a deed conveying an undivided one-fourth. Thereafter, the Johnston discovery-stake, bearing the name of the lode, was permitted to remain. The other location stakes bearing the Johnston signs and marks, were also permitted to remain, and the property was worked immediately thereafter as the J. C. Johnston.

There is some evidence in the record tending to show that the J. C. Johnston location certificate was surrendered to Acheson at the time of the conveyance from Crittenden and Adair to Acheson, but this is explained by the testimony of Johnston that the location certificate alleged to have been surrendered to Acheson, was erroneous, was not signed and was never used for that purpose; that the second certificate, in proper form, was duly signed by all the locators, and that it correctly described the ground and that the deed which Acheson obtained and accepted from Crittenden and Adair corresponded exactly with the

last mentioned certificate and did not correspond with the description contained in the first.

This and other evidence, which can be pointed out in the record, fully warrants the conclusion that Johnston was correct in his testimony when he declared that Acheson accepted and was satisfied with the new location of the lode under the name of the J. C. Johnston, and that he did not expect Johnston to surrender or convey the other undivided fourth until he received the sum of $500.

Johnston assuming that Acheson would carry out the terms of the last arrangement, returned to Littleton and there awaited the promised payment of the $500. About this time he was approached by Chatfield, who desired to purchase an interest in the property, namely, one-fourth. Johnston at first refused to negotiate with him, telling him that he expected to sell an undivided fourth to his former partner, Acheson, and his associates, and afterwards, before the making of the title bond in September, Chatfield, to use his expression, was "funning" him because he was waiting for the money from Acheson and his people. Acheson again having failed to redeem his promise, Johnston contracted with Chatfield to convey an undivided fourth of the Johnston, agreeing to sell the same for the sum of $1,200, and he executed a title bond accordingly.

This was wholly consistent with the arrangement entered into at Leadville. Acheson and his associates had failed to pay the $500, or even any sum, to Johnston, and it is unquestioned that some money was due to Johnston, if Acheson, Seaver

and Dunscomb intended to claim title under the original contract.

At this stage of the case, Chatfield, Wilson, Thomson and Sayer appeared as new actors upon the scene; but before continuing the narrative as to them, it is well to stop at this point to consider the position and apparent rights of Acheson, Seaver and Dunscomb, and the complainant, Johnston.

I.

In any view of the case, Johnston was clearly entitled to an undivided one-fourth of the property, whether claimed as the Smuggler Two or as the J. C. Johnston. It must be admitted that he had fully performed his part of the agreement entered into in February of that year with Acheson, Dunscomb and Seaver. If the Smuggler Two location was to be deemed valid, and the rights of all therein were to be as defined in the February agreement and in the location certificate itself, Acheson, Seaver and Dunscomb were under legal as well as equitable obligation to pay to him the money due under that agreement. They were likewise required to pay and discharge, and thus relieve Johnston from liability as to all other indebtedness contracted either for labor, supplies or otherwise in the working of the property.

Acheson, when at Leadville, about the 1st of August, had not sufficient money to settle in full with Crittenden and Adair. He had not sufficient even to pay in full the claim of Mr. White, and he was only able to pay to Johnston the small sum of $25, or thereabouts, this payment being made ap-

parently to enable Johnston to return to his home at Littleton.

Assuming, for the sake of argument, that the Smuggler Two location is valid, and that a title under the location certificate was vested in Acheson, Seaver and Dunscomb for the three-fourths, it is equally true that the property was then in that precarious condition that the title might be lost in many ways. Mining claims, until patened, are always open to adverse claims and locations. It frequently happens that the same piece of ground sometimes, even of considerable area, is covered by several conflicting locations, each, for some reason, claiming that its title is the better. These conflicting claims frequently end in an application for patent by one of the contending claimants. The others are then required to make objections to such application by filing what is termed an adverse claim in the proper land office, and to follow and support such adverse claim by the institution of a proper suit in a Court of competent jurisdiction. Failing to adverse, or failing to bring suit in its support, it is then assumed, as matter of law, as provided by statute, that the owner of such conflicting claim has no title to the ground so applied for.

Thus, whatever may have been the original equities between Johnston, Acheson and Seaver under the Smuggler Two location, a new condition was presented and a different principle applied. So long as Johnston claimed under the Smuggler Two location and so long as he recognized the binding force of the February contract, he probably could not question the rights of his co-owners under that agreement; but it was clearly open to him to say

at some time in consequence of the many and repeated defaults upon the part of his associates that the agreement had come to an end; that the common enterprise had been abandoned by his associates and that he from that time on intended, in conjunction with others to claim the property and the whole property adverse to his former associates, especially as the agreement was not confined to one lode only.

The making of such a claim constituted an ouster, and the possession thereafter and the claim for title under the Johnston location was an adverse possession and a claim adverse to Acheson, Seaver and Dunscomb. It was thus perfectly competent for Johnston and Crittenden and Adair, who were his associates in the Johnston location, to make an application for patent, thus making it necessary for Acheson, Seaver and Dunscomb either to abandon their alleged right to the property or to file an adverse claim, and to follow that by an appropriate suit in a Court of competent jurisdiction.

Whether such an issue would have been determined in favor of Johnston, or in favor of Acheson, Seaver and Dunscomb, it is immaterial to inquire. It is enough to know and to say that Johnston had the legal right to put himself in a position adverse to his former associates and to dispute with them their title to the property. In other words, he had the right to claim they they had at a critical time abandoned the venture and thereby forfeited all their interest in the property, and he had the further right according to the doctrine laid down in Murley vs. Ennis, *supra*, to continue

the original undertaking by himself or by association with others.

There was no fraud and no moral wrong in making such claim or in taking such course. There was nothing secret or furtive about his conduct in that respect. Acheson became fully aware of the changed conditions and new claims made by Johnston because of their failure to carry out the contract of February, and he also knew on what terms and in what manner the former rights and relations could be re-established. From the 1st of August until about the middle of September this opportunity was given to Mr. Acheson for himself and his associates. Johnston failing to hear from him, at last came to the belief that Acheson and his associates were content with the new condition of things and thereupon he entered upon negotiations with Chatfield, as already mentioned.

II.

Chatfield, apparently, was quite familiar with the general facts concerning the property at the time of the first negotiation. Johnston claimed to be the owner of the undivided half of the J. C. Johnston. He had not agreed to part with his entire interest. If Acheson had paid the $500 promised,he intended to retain the other one-fourth. On the other hand, if Acheson failed, as he did, to carry out his agreement, he was willing to sell to Chatfield or anybody else the same one-fourth interest for a satisfactory price.

The sum of $1,200 was agreed upon and times fixed for its payment by installments. At the appointed time, when the money was to be paid and

the deed was to be executed, Johnston appeared at Leadville for the purpose of consummating the agreement. Chatfield then informed him that there was some trouble about the title; that the Smuggler parties were making some claim, and he represented, even, that a suit had been brought by some of the Smuggler parties. This was the first knowledge that Johnston had that the Smuggler Two people intended to question the validity of the J. C. Johnston title. Believing that Chatfield told the truth, he told Chatfield all the facts, but Chatfield pretended that he could not safely buy the title unless Johnston would employ a lawyer to defend it against the suit which he said had been brought.

This representation was clearly false, and shows that at the beginning Chatfield conceived and harbored a design to get all the title of Johnston to the J. C. Johnston lode under the pretence of purchasing the one-fourth and protecting that against claims from the Smuggler people. Had it been true that the suit had been brought by the Smuggler people, it could only have affected the one-fourth which Johnston claimed under the Johnston location, and could not have affected his one-fourth to which he was entitled under the February agreement and the Smuggler location.

Johnston pleaded that he had no money to employ lawyers, but he was induced to visit the office of Messrs. Thomson and Sayer, who were recommended to him by Chatfield as among the ablest mining lawyers in the State and honorable men in whom he could safely confide. Johnston was not acquainted with either. He had heard

something of Mr. Sayer, but knew nothing of Mr. Thomson.

At this time he had undimished confidence in Chatfield, who was his neighbor at Littleton, both families coming from the same State, resulting in more than ordinary intimacy and great confidence in Chatfield upon the part of Johnston. He again stated the case to Messrs. Thomson and Sayer, and he was again informed that a suit had been brought and that it was necessary to defend it. They demanded a fee of $500. As he was not able to pay in cash, they demanded an eighth of the property, and thereupon he agreed that he would convey an eighth of the property as compensation for services in the litigation between the Smuggler Two and the J. C. Johnston location. So full was his confidence in Chatfield, and apparently also in Messrs. Thomson and Sayer, that he permitted them to draft the necessary contract and conveyance, but he had perception enough to observe that in the contract drawn by Mr. Sayer there was something which he did not fully understand, but which he knew was not in accordance with the oral agreement which had been reached between Chatfield and himself. He objected, and that part of the agreement was excluded by drawing lines through it.

The agreement, however, did not correspond exactly with the statement of Chatfield that a suit had been commenced. It recited that "in the event of the party of the first part (Chatfield) prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part, for the vesting of the legal title in

the party of the first part against persons who claimed adversely to him an interest in the following described property to-wit." As there was no other possible claimant, and as no other claimant has been mentioned during any of the proceedings, it follows that the persons claiming adversely were persons claiming under the J. C. Johnston title.

In this there was implied a willful misrepresentation; because the evidence wholly failed to show that Acheson, Dunscomb and Seaver, or any other person claiming under them as early as the 12th of October, 1880, ever questioned or denied Johnston's title to the undivided half, and certainly they never did question his right to the undivided one-fourth. It seems, however, from the evidence that about this time a scheme was concocted by Chatfield, Thomson and Sayer, for the purpose of obtaining a patent to the J. C. Johnston lode. To accomplish this it became necessary to get from Johnston a conveyance conveying the undivided half, which of record appeared to be in him. It further appears that they expected to get a deed for the other half from Crittenden and Adair, although they knew and had been so informed by Johnston that Crittenden and Adair in August of that year had made a deed conveying their entire interest to Acheson. But Chatfield replied that the deed to Acheson was not recorded; and this purpose was actually carried out, because such a deed was subsequently obtained from Crittenden and Adair and was duly recorded.

Thus, having the whole legal title which appeared of record concerning the Johnston lode, they organized the Fulton Mining Company and

conveyed to it all the title so acquired to the Johnston lode and made in its name an application for patent. This was not consistent either with the verbal understanding reached between Chatfield and Johnston in October, or even with the written agreement, which was supposed to have been drawn in accordance with it, but it was an open and bold attempt to get title to all of the J. C. Johnston lode to the exclusion of Acheson, Seaver, Dunscomb and their grantees, and also with the evident intention of getting one-eighth of Johnston's title for nothing, and perhaps with the still further fraudulent intention to cheat and defraud him out of the other one-eighth by various pretences and excuses.

In the fall of that year, and before the scheme had made much progress, Dunscomb appeared. Dunscomb was a brother-in-law of Thomson. Previously they were not on good terms, but they soon came to an understanding as to a division of the property. Dunscomb become identified with the Fulton Mining Company. He accepted the J. C. Johnston title, which it seems was exactly in accordance with his rights under the deed to Acheson and not under his pretended rights, according to the agreement of February. Still later Seaver appeared, and he was settled with, and afterwards, the grantees of Acheson.

All these settlements were made not for the purpose of protecting the title conveyed to Chatfield by the deed of October 12th, nor for the purpose of protecting the trust estate which by the same conveyance he confided to Chatfield, but were settlements made solely for the purpose of

obtaining as large an interest as possible in the J. C. Johnston lode.

The last settlement was made with Mr. Holden, who was one of Acheson's grantees, and he assumed, in such settlement, to represent all the other of Acheson's grantees. That settlement resulted in the withdrawal of all adverse claims and the dismissal of all suits, thus removing all obstructions against the issue of the patent in accordance with the application made by the Fulton Mining Company for the J. C. Johnston lode.

Johnston was not consulted or even informed in any way concerning these various negotiations and settlements, though at all times during that period, within the State and easily accessible by Chatfield, his friend and trustee. Having full confidence in Chatfield, he rested easy under the belief that in time he would be reinvested with the interest in the property which he was to obtain under the agreement between himself and Chatfield.

The patent was issued some time in 1884, but Johnston, though he had made frequent inquiries in the meantime, was not informed until some time in 1885 that the patent had issued. Thereupon he demanded a conveyance from Chatfield, which led to an angry interview, resulting in a statement by Chatfield that if he (Johnston) claimed anything under that agreement, he must go to the Courts to get it.

III.

On this state of facts, the learned District Judge sitting in the Circuit Court, decided the equities in favor of the complainant, but limited his

right to recover to one-eighth interest instead of the whole quarter interest which Johnston had parted with under the deed and contract of October 12th.

We claim the Court erred in holding that Johnston was entitled to recover *only* a one-eighth. The decision of the learned Judge in so restricting the complainant to the one-eighth was put upon the ground that if the contract had been complied with, he would only be entitled to recover one-eighth, and he seemed to treat the efforts of Chatfield in procuring title to the Johnston lode, resulting as they did in the obtaining of the patent, as a performance of the contract, and that Johnston could make no greater claim. Had the conduct of Chatfield been free from fraud, and had he in any legitimate, though different, manner from that contemplated in the agreement, obtained the Johnston title, he could no doubt justly claim in equity that he or his grantees were entitled to the other eighth as compensation for the services in protecting and acquiring the title to the whole one-fourth. But such was not the case, nor did the learned Judge so find. The evidence established quite as clearly and convincingly as it did to the mind of the learned Judge the equity in favor of the plaintiff, that there had been misrepresentation, abuse of confidence and friendship, and a systematic fraud perpetrated upon the complainant by Chatfield from the beginning, in which he was actively aided and abetted by his attorneys and associates, Messrs. Thomson and Sayer.

Chatfield's first statement, in October, 1880, that a suit had been commenced by some of the

Smuggler parties was admittedly false, and the other statements and insinuations made to excite the fear and apprehension of Johnston so as to make him more pliant for their purposes, were equally destitute of truth. There was no impediment to interfere with the execution of the contract made in September between Johnston and Chatfield for the conveyance of the undivided one-fourth. No suit had been brought, none had been threatened, and there was not the slightest claim or objection on the part of any one against the right of Johnston to sell and convey a good title to the undivided one-fourth mentioned in the title bond, nor was there at that time any cause for the belief that litigation was likely to ensue between the Smuggler people and Johnston as to the other fourth, which called for the intervention of Chatfield and his attorneys, Messrs. Thomson and Sayer.

Making use of all his opportunities, Chatfield obtained a deed conveying the entire undivided one-half, and sought to cover and conceal his fraudulent purpose by having drawn a crafty, obscure and ambiguous agreement or declaration of trust, showing the right of Johnston to the remaining one-fourth, or half of such fourth.

According to the familiar rule already cited in the brief of my associate, Chatfield at once became a trustee for the whole undivided one-fourth conveyed to him, and Johnston, after the discovery of the bad faith of Chatfield and the frauds perpetrated upon him, at once became invested with the right to demand the conveyance of the whole interest wrongfully obtained from him.

No serious effort was made at the hearing to defend the bad faith and fraudulent conduct of Chatfield, but notwithstanding the stipulation made by counsel during the progress of the case, that notice to the Standard Mining Company of all the frauds and irregularities had been sufficiently proved, it was claimed by the President of the Standard Mining Company that the company had no notice, and that it was an innocent purchaser. This statement is satisfactorily met by the opinion of the learned Judge found in the appendix of the brief of my associate, and there was no question, therefore, as to Johnston's right to follow the interest into the possession of the Standard Mining Company and to demand its recovery.

At this stage of the case, a petition for rehearing was filed by the Standard Mining Company, and afterwards the whole cause was argued upon its merits on the same testimony, and, some time afterwards, the same learned Judge, not retracting anything which he had before said or decided, dismissed the complaint upon the ground that the complainant was guilty of laches, and from that decree this appeal was taken.

IV.

Deeming that sufficient has been said for the present, at least as to the equity of complainant, the only question remaining for discussion is whether the objection of laches made by the Court was a sufficient bar to extinguish or to deny the equity of the complainant.

In this respect we claim that the District Judge

greatly erred, and the first error consisted in assuming that the agreement of October 12, 1880, between Johnston and Chatfield, was one by which or through which the rights of Johnston were to be determined. In other words, it was assumed that Chatfield had some rights under that contract, and if so, was entitled to claim protection by raising the bar of laches.

As already argued, Chatfield by reason of the misrepresentations, abuse of confidence and frauds before mentioned never acquired any equitable interest in the other one-fourth. He bought and paid for one-fourth only, the other he obtained by false pretenses and by the making of a promise which he never expected to perform, which is also a species of fraud. But even assuming that the paper signed by Chatfield and delivered to Johnston amounted to a contract, the learned Judge again erred in holding that the right and duty of the complainant to demand the conveyance of his interest accrued before the issue of the patent. It should be borne in mind that the paper is not as clear and specific in its meaning as it would have been if drawn by a lawyer of ordinary ability having regard for the rights and interests of Johnston, and it must be further admitted that as it was drawn by a lawyer of fair ability, such as Messrs. Thomson and Sayer were represented to be, if it was drawn in good faith for the purpose of defining and protecting the rights of Johnston, it would have been much more clear and specific. Coupled with the other circumstances of the case, it is no more than fair to assume that the vague, uncertain and ambiguous language in which

the agreement was couched was due to some ulterior purpose or design upon the part of Thomson and Sayer, a design, evidently not unfriendly to Mr. Chatfield, and certainly, as subsequent events have shown, not favorable or friendly to the rights of Mr. Johnston.

The document belongs to that class of instruments in which the rule that the inferences and intendments must be construed most strongly against the maker, should be rigidly applied. It is not so much what was or is the legal effect of the instrument. The substantial question is, what impression did the whole transaction itself, and of which the instrument was but a part, have or could be said to have upon the mind of Johnston or the mind of a reasonable person? Did it have the effect to declare that Johnston, when he accepted that paper, was informed that he must make a demand for the reconveyance of the interest agreed upon, after certain possible or probable suits might be decided or compromised, and before the issue of the patent? Such seems to have been the view of the learned Judge.

On the other hand, if, as we contend, the whole transaction produced upon his mind, or would have produced upon the mind of a reasonable person under like circumstances, the understanding that the duty to convey rested upon his trustee when the legal title was acquired, by virtue of the issue of the patent, and that his duty to convey did not depend upon the request for the conveyance by the *cestui que trust*, the *cestui que trust* having confidence in his trustee at the beginning, and having no reason to suspect bad faith in the interval, was

not chargeable with the duty to inform himself when the patent issued or when the title was perfected, or when the suits and compromises were settled or decided. He had a right to assume that this information would come from his trustee, and his alleged failure to exercise more diligence and to make more numerous inquiries, is not only excused and accounted for, but is justified by the belief and confidence which he still reposed in Chatfield, his trustee.

It was not until some time in 1885 that he learned that the patent had issued, and then for the first time he learned that Chatfield did not intend to carry out the agreement, and that he must bring suit.

There was no lack of diligence or promptness on his part after such discovery. He brought a suit in the Circuit Court of the United States. It is said that he misconceived his remedy and mistook his forum; that the suit was dismissed. This was soon followed by a second suit in the State Court, which, on account of some defect in the process, was also dismissed. The second suit was brought by different counsel, who subsequently died, thus accounting for the delay in regard to the second suit. And lastly, at no great interval of time after the dismissal of the second, the third and the present suit was brought.

There has been since 1885, no time in which the plaintiff failed in some manner to assert his claim to the recovery of the interest in the Johnston lode. He may not have been fortunate or successful in his attempts, but it cannot be said that he has slept upon his rights or has been indifferent

to the fraudulent appropriation of his property by Chatfield and his associates.

The learned Judge, again under a mistaken idea of the facts in the case, applies with all strictness the rule laid down in the case of Twin Lick Oil Company vs. Marbury, 91 U. S., 587. That case, in its nature and in its facts, was essentially different from the one at bar. It was a suit by the company to set aside a sale of its property under a trust deed four years after the sale had occurred. In the meantime, large expenditures had been made upon the property by the purchaser, and the property, on account of that fact and other causes, greatly increased in value. The sale was not absolutely void but was voidable only. The complainant's equities were fully and carefully considered by the Court, and it was quite well established in the opinion that the complainant's case was without equity. The complainant was required to elect, after acquiring full knowledge of the sale and all its circumstances, whether to submit to it or to object to its validity. The period in which such election must be exercised is one which is not determined or affected by the statute of limitations, but is one defined and enforced in every case by a Court of Equity, according to the circumstances.

As was proper the Court, in that case, said that the plaintiff failed to determine his election at the proper time; that he delayed too long, and that the transaction, which appeared to be regular rather than fraudulent, could not be questioned at that late day, especially as the property was of a

character subject to fluctuation and had greatly increased in value.

This case differs wholly in its nature as well as in its facts. There was no question of election in this case, and there was no waiver or abandonment of the claim to the property. The property was obtained by Chatfield from Johnston, in the first instance, by abuse of confidence and by fraud, as already shown, and promptly upon the discovery of the fraud, Johnston instituted a suit, though futile in its result, to recover the interest out of which he had been defrauded, and the second and third suits were brought with sufficient closeness to each other to show a constant and *bona fide* attempt upon the part of Johnston to assert his rights.

Again, Johnston did not, as might be inferred from the opinion of the learned judge, willingly stand by and permit others to spend money in the development and improvement of the property, nor did he wait until it should be determined whether the value of the property was likely to increase.

The evidence shows that no great amount of money in the way of development had been expended upon the property before 1883. Up to that time, so far as the record discloses, the work had been of a slight and casual character. Some money, though not a great deal, was expended in the litigation and in the effort to procure the patent.

The capital stock of the Fulton Mining Company originally was $1,000,000, divided into 100,000 shares of $10 each; but it was afterwards increased to $1,250,000, divided into 125,000 shares of $10

each, and on the 4th of June, 1883, it appears that 700 shares of the treasury stock had been sold to "Howard M. Holden for twenty-five cents per share to pay the balance of the expenses for obtaining patents and entering the claims of the said company" (printed record, p. 348). At this rate, the property of the company was only worth $31,250; and on the 27th of May, 1885, the secretary and acting "treasurer, Daniel Sayer, submitted a statement of the amounts received by him for the company since the 7th day of October, A. D., 1884, and also a statement of the amounts disbursed by him for the same period, showing an aggregate amount of receipts of $723.21, and an aggregate amount of disbursements of $954.55, and also showing an indebtedness to him from the company of the difference between such receipts and disbursements, or $230.84" (printed record, p. 355). And it appears from the proceedings of the same meeting that the pay roll for the current month to the 1st of June, was stated to be $500, and it was then ordered that 9,000 shares of treasury stock be sold at 50 cents per share "for the purpose of discharging the present liabilities and defraying the future expenses of the company, the stockholders of the company to have the privilege of purchasing said stock in amounts proportioned to their several interests in the company." (Id., 355.)

It also appears in the record that the property had been worked under a lease for a part of the time, and that at no time during the existence of the Fulton Mining Company, as appears by the record, did the stock of the company seem to have an

estimated value exceeding $1 per share, which would make the property worth $125,000. At a meeting of the company on the 31st of December, 1885, "I. W. Chatfield, late Superintendent, reported that he had suspended work on the company's property in consequence of having no funds to meet the present liabilities against the company or for the future developments of the company's property, and submitted a statement showing the present indebtedness of the company." (Id., p. 364.)

Following this statement, a resolution was offered and adopted authorizing a loan for the purpose of raising $8,745 to pay the existing indebtedness, and to raise an additional sum of $2,755 for the purpose of continuing the work on the company's property (Id., p. 365), and on the 1st day of July, 1886, as it appears from the record of the Fulton Mining Company, Mr. Anderson, of Kansas City, submitted a proposition to purchase the Johnston and Chatfield lode mining claims and all the other property of the company for the sum of $125,000, which proposition was accepted.

The record fails to show when the Johnston mine became a paying concern, but it had paid but little, if any, profit prior to the beginning of the present suit, and none at the time either of the other two suits was brought.

No innocent purchaser was misled into the expenditure of money. The evidence, as well as the stipulation of counsel, showed that there was a direct and constant knowledge of the Johnston claim of title on the part of all concerned, beginning with Chatfield and extending to Thomson, Sayer, Dunscomb, Seaver, the Fulton Mining

Company, Anderson, Holden and Chick, and that although two corporations had been organized, the corporations were but means, or methods adopted by the same parties for the ownership of the property and the management of the business.

Thus it cannot be said that Johnston either purposely or negligently delayed the institution of a suit, nor did he fail, though some of his agents may have faltered, in the execution of his purpose to re claim his property. Every dollar expended and risk taken by any of the parties in the case working and developing the property, were with full knowledge of Johnston's rights, and subject to the the probabilities and possibilities of all litigation of that character, and it seems to be a perversion of the doctrine of laches, which is intended mainly for the protection of innocent purchasers, to say that the frauds by which they obtained the complainant's property should be forgotten or pardoned, and that the plaintiff should be denied the full limit of time allowed by the statute of limitations for the institution of a proper suit to enforce his claim.

While it was pretended at one time during the argument that the Standard Mining Company was an innocent purchaser, it clearly appeared, as shown in the opinion of the learned Judge, that it had full knowledge, and, in addition to that, the record shows that the conveyance from the Fulton Mining Company to Anderson, and from Anderson to the Standard Mining Company, were quit-claim deeds only, and under the rule settled by this Court in several of its decisions, a purchaser under such a deed is not deemed an innocent purchaser.

The complainant was taken by surprise at the objection of laches. It is not contended that laches must be pleaded in the answer as a bar. It is admitted that the objection may be taken on final hearing, but usually, and as a matter of fairness, a defense of that character ought to be disclosed at such a time and in such a way as to enable the complainant to offer evidence excusing or explaining the apparent delay in the institution of a suit. Had such a defense been intimated, it is within the bounds of truth and propriety to say that much evidence bearing upon that question, not now in the record, might have been presented, but we sub mit, that, taking the record as it is, and without undertaking to enlarge or strengthen it by inferences or assumptions, it is sufficient to show that the learned Judge greatly erred in holding that the complainant was guilty of laches, and this defense never occurred to the learned counsel for the defendant when they filed their petition for rehearing. In the eight causes assigned in their petition, nothing is said about laches, and it thus appears that the last decision of which we complain was based upon an objection not urged as a reason for rehearing and not expected by the complainant.

Believing that the Court greatly erred, we respectfully ask that the judgment be reversed and the cause remanded to the Circuit Court, with directions to enter a decree in favor of the complainant for the full one-fourth interest claimed.

Respectfully submitted,

HUGH BUTLER,

Counsel for Appellant

148 U.S. 360

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JAMES H. McKENNEY,
CLERK.

IN

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1892.

JOHN C. JOHNSTON,
Appellant,

vs.

THE STANDARD MINING COMPANY OF KANSAS CITY,
Appellee.

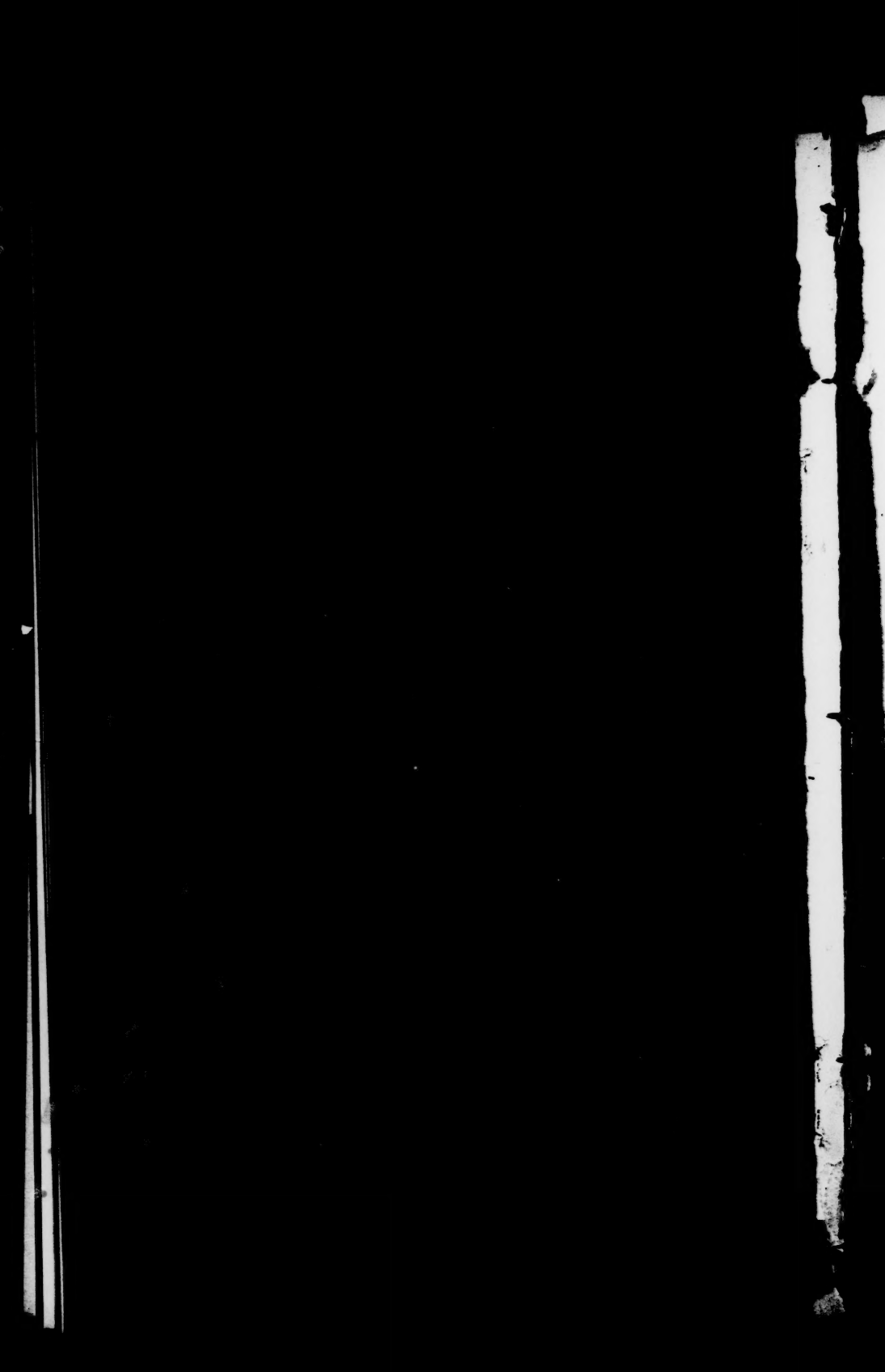
Term No. 133.

Appeal from the Circuit Court of the United States for the District of Colorado.

DEFENDANT'S BRIEF AND ARGUMENT.

C. S. THOMAS,
Solicitor for Appellee.

C. A. SPLIV, PRINTER, DENVER.



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JOHN C. JOHNSTON, *Appellant,* vs. THE STANDARD MINING COMPANY OF KANSAS CITY, *Appellee.*	*Term No. 133.* *Appeal from the Circuit Court of the United States for the Distict of Colorado.*

DEFENDANT'S BRIEF AND ARGUMENT.

STATEMENT OF THE CASE.

On the 7th day of February, 1880, the appellant with one A. L. Rouse entered into an agreement or "prospecting contract" with J. C. Atchison, James E. Seaver and Edward Dunscombe. It provided that Johnston and his partner would pass title to Atchison and his partners to one-half

of certain mining locations in Roaring Fork District, in what was then the County of Gunnison and State of Colorado, called the Little Pearl, Badger Boy, Tiptop, John G. Lilly, Long Johnston, Detective and eleven other claims unnamed, but partially described in a sketch then referred to; and would also devote their time and attention to prospecting, making locations, and, when necessary, working assessments on locations. The first parties were to give the second parties half interest in the new locations, and put their names jointly on all stakes set. Atchison, Seaver and Dunscombe, in consideration of the above, agreed to pay Johnston and Rouse on starting for Roaring Fork, $275 to pay for their outfit, and one month's advance wages; also to pay them $37.50 per month for expenses and to pay for all work to be done on claims in pushing developments; and when a claim should be sold, they were to first retain out of the proceeds thereof all moneys expended, after which Johnston and Rouse were to receive $200, the balance to be divided equally between the parties of the first and second parts. An unimportant exception was made concerning the Little Pearl, and if the parties of the first part should at any time desire to dispose of their interest in any of the properties, the parties of the second part should have the option of purchasing (printed transcript, p. 57 and following).

The Badger Boy claim, mentioned in the above agreement, embraced the territory which is in controversy here (transcript, fol. 326, p. 193). Shortly afterwards Johnston and Rouse proceeded to Buena Vista where Dunscombe lived, on their

way to what was then generally called the Roaring Fork country, for the purpose of carrying out and effecting the terms of their agreement. At that point, Johnston became intoxicated and, Rouse abandoned the contract. Afterwards Dunscombe and his associates agreed with Johnston to pay the latter $75 per month if he would carry out the contract on his own account, they to have three-fourths instead of one-fourth of the properties acquired and to be acquired thereunder (transcript, fol. 157). Johnston accordingly proceeded on his way across the range, and arriving at his destination began work upon the location which he had called the Badger Boy, but which evidently had been located without the discovery of mineral therein. Some money was paid him before he left Buena Vista, and an outfit consisting of a number of horses and jacks, with provision, working tools, etc., were furnished him. He had been over in that section of the country and engaged in prospecting in the year 1879 (transcript, folio 325). He reached his destination after the contract with Atchison was made, some time in March, 1880 (transcript, folio 222). Between that time and the location of the "Smuggler 2" lode Atchison, Seaver and Dunscombe had all visited the new camp of Aspen and had paid divers sums of money on account of the development work which Johnston was carrying on, and were, as a matter of course, responsible for any liabilities which Johnston had incurred in the performance of the contract.

A ledge or vein of mineral ore had been discovered and exposed by Johnston upon the ground

in controversy prior to Atchison's visit to the camp (transcript, fol. 340), and before the location of the ground as the "Smuggler 2."

On the 9th day of June, 1880, and while Mr. Atchison was in the camp, the "Smuggler 2" mine was located. The certificate contained the names of Margaret A. Dunscombe and Belle R. Seaver, with the appellant Johnston; and the interests specified were three-eighths each to Dunscombe and Seaver, and the remaining one-fourth to Johnston. The date of discovery was given as April 15, 1880 (transcript, fol. 212–15). The interests located in the names of the two women represented the ownership of Atchison, Dunscombe and Seaver. Atchison took the certificate of location with him upon his departure from the camp, about the time of its date, and subsequently and on July 8, 1880, had it recorded in Gunnison County, as required by the State law.

Work continued upon this location under the direction of the appellant, and in accordance with the terms of the contract, apparently without cessation, until the 4th day of August, 1880, at which time the ground embraced in the "Smuggler 2" location was included in another location made by Johnston, and called "The J. C. Johnston" Lode Mining Claim. Two location certificates were made of the last named location, and probably at different times, one of which was surrendered by Johnston shortly thereafter to Atchison, while the other was recorded on the 21st day of September, 1880 (transcript, fols. 439–41). The former was never recorded (transcript, fols. 211–12). There is no substantial difference between these two cer-

tificates; the name of Adair appears only upon the one which was recorded, although it is written in the body of each.

This location was made in the names of John C. Johnston, G. A. Crittenden and J. W. Adair, and the recitals show that Johnston owned an undivided one-half thereof, the remainder being divided equally between the other two. If the appellant's testimony is to be believed, he re-located the "Smuggler 2" as the "J.C. Johnston," and by that act sought to deprive his co-owners of the former location of all interest in their property, because he and they were indebted and had contracted with Crittenden for provisions, who wanting his money, suggested to Johnston that he would assume all debts of the concern and pay all the men if Johnston would go to work and re-locate the ground and let Crittenden and Adair have half of it (transcript, fol. 379). Crittenden was the man who suggested the idea of making the new location, and in consideration of his agreement to assume the liabilities of Atchison, Seaver and Dunscombe, such location was made. Before it was made, however, the lode had been discovered (transcript, fols. 340, 375, 385). It is true that Johnston asserts that ore was not discovered in the place until after Smuggler Two was located (fol. 364); but it is equally true that he contradicts himself as to this point more than once. And the discovery, as we shall hereafter contend, made subsequent to the location, but before the acquisition of third parties of any rights to the premises, is tantamount to original discovery before location.

Immediately after the location of the "Smug-

gler 2" as the "J. C. Johnston," Crittenden and the appellant started for Leadville; and although Johnston says Crittenden went to Leadville to raise the balance of the money necessary to pay the "Smuggler 2" debts (fols. 380, 386), yet it is evident that their object was to sell the Johnston and get it by that means into the hands of some assumed *bona fide* purchaser before the character of its location was discovered and exposed by Atchison and his partners. (Testimony of Atchison, fol. 69 and following.) Crittenden, who, according to the testimony, soon afterwards became an inmate of the Kentucky penitentiary, and who shortly afterwards, according to the testimony of Miller, attempted to defraud some one by falsely claiming to be the owner of another location called the Smuggler, and who doubtless tempted Johnston into the re-location of "Smuggler 2," under the pretense, among other things, that Millar, Adair and himself had discovered a flaw in the location of "Smuggler 2" (transcript, folio 253), was overtaken before any such disposition of the property could be made. For about the time that the "J. C. Johnston" was located Mr. Atchison arrived in Aspen (fol. 69). He found that Johnston had entered into the combination with Crittenden and Adair to rob his associates of their property, and had left the county. He overtook them at Leadville, and there finding that they were negotiating for the sale of the J. C. Johnston location, acted with promptness and decision, and succeeded in obtaining possession, as he supposed, of the original location certificate, together with a convey-

ance to him from Crittenden and Adair of whatever interest they pretended to have in the premises.

Johnston having been disabled by an accidental shot in the foot, came to his home near Denver, while the owners of "Smuggler 2" continued work upon the premises and paid off the greater part of the accrued debts, none of which, so far as appears from the testimony, were paid by Crittenden. Atchison and his partners assumed and had the right to assume that all trouble so far as the location of the "J. C. Johnston" was concerned was over; and that by his surrender of the location certificate the appellant had acquiesced in the assertion of his associates of the integrity of the "Smuggler 2" location. In this they were disappointed; for on the 14th day of September, 1880, the appellant executed a title bond to one I. W. Chatfield (transcript, fol. 441), in which for the sum of twelve hundred dollars, to be paid as therein provided, he agreed to convey to Chatfield an undivided quarter of the J. C. Johnston lode, and an undivided half of his interest in the Kansas City, Combination, John Lilly and J. C. lodes, together with an undivided half of his interest in the Smuggler lode. This document, together with a location certificate of the J. C. Johnston claim, was recorded on the 21st day of September, 1880, and, according to the testimony of both Chatfield and Johnston, certain money and property passed from Chatfield to Johnston before the 12th day of October following. At that time Chatfield refused to pay anything further under the bond, because of in-

formation which he claimed to have received concerning the character of his title; and as a result of this difference a new arrangement was entered into which culminated in the appellant making to Chatfield a deed of all his interest in the "J. C. Johnston" mine (transcript, fol. 444); upon which an agreement was executed between the two, and which agreement constitutes the foundation of this controversy. It appears in the record at folio 148 and again at folio 446, and for convenience is here quoted in full:

"Memorandum of agreement made and entered into this 12th day of October, A. D. 1880, by and between I. W. Chatfield, of the City of Leadville, County of Lake and State Colorado, party of the first part, and J. C. Johnston of the same place, party of the second part. The party of the first part, for and in consideration of the sum of one dollar to him in hand paid, and for other good and valuable considerations to him moving from the party of the second part, doth hereby covenant and agree to and with the said party of the second part that in the event of the party of the first part prevailing and succeeding in certain legal proceedings about to be instituted and commenced by the party of the first part for the vesting of the legal title in the party of the first part against persons who claim adversely to him, an interest in the following described property, to wit: The lode, lead or mineral deposit known as and called the J. C. Johnston lode, situate, lying and being in Roaring Fork Mining District, Gunnison County, State of Colorado. That the party of the first part upon so acquiring legal title and equitable to said mine by means of legal proceedings so about to be commenced, doth hereby covenant and agree to and with the said party of the second part to convey to said party of the second part an undivided eighth interest in and to the said above described lode, which shall be free and clear from all expenses incidental to the

litigation incident to the said contemplated suit. And the party of the second part for and in consideration of the covenants and agreements to be kept and performed, as hereinbefore mentioned, doth covenant and agree to and with the party of the first part, upon having or receiving the title to an undivided eighth interest in and to said lode, to pay an undivided eighth part of the expenses which shall accrue in developing and opening the said above described lode. ~~And it mutually agreed that at the time of the ensealing and delivery of these presents, that all of the title which appears of record in the name of J. C. Johnston or John C. Johnston is vested the said I. W. Chatfield, and the suit about to be brought by said Chatfield is for the recovery of a portion of the lode which does not appear on the record in the name of said Johnston.~~

"In witness whereof the parties hereto have hereunto subscribed their names and affixed their seal on the day and date first above written.

"ISAAC W. CHATFIELD,
"JOHN C. JOHNSTON."

The interlined sentence in the contract was stricken out at the time of its execution.

On the same day (transcript, fol. 507), Johnston made a conveyance to Charles I. Thomson and Daniel Sayer of the "Smuggler No. 2" lode, which interest was conveyed by Thomson and Sayer to W. J. Wilson on the 15th day of October, and on that day (fol. 150) Chatfield conveyed to Thomson and Sayer an undivided eighth interest in and to the J. C. Johnston.

On the 9th day of December, 1880, articles of incorporation of the Fulton Mining Company, with Edward Dunscombe, Isaac W. Chatfield, William J. Wilson, Daniel Sayer and Charles I. Thomson, were duly executed (fols. 492–5), and on the 14th day of December, I. W. Chatfield conveyed to said

company the "J. C. Johnston" lode. (Fol. 509.) A deed from Crittenden and Adair for their supposed interest in the same lode to the Fulton Company was recorded on the 22d day of December, 1880. The expediency of forming an incorporation and conveying the property in controversy to it, was the subject of discussion between Johnston, Chatfield, Thomson and Sayer before the execution of the contract of October 12th, and was fully assented to and understood by Johnston.

The appellant went to Aspen in 1881 (fol. 349), knew that the Smuggler 2 parties had driven the long tunnel in 150 feet further than it was when he left the ground (fol. 348), and in May, 1881, he went to the law office of Thomson & Sayer; was then told in response to his inquiry as to how the case was, that it had been compromised; was given papers that he might make a copy of them, but for some reason he did not make the copy, and afterwards went to the Wood River country in Idaho, evidently for the purpose of prospecting. In February application for patent on the J. C. Johnston location was made, whereupon actions at law and in equity were instituted against the owners of the Johnston title by the grantors of Seaver and Atchison, Dunscombe having been compromised with at the outset, for the purpose of enforcing a recognition of their legal rights as owners of the "Smuggler 2" location. These suits were adjusted by compromise in April, 1882, before which time application had been made for patent from the government, and the latter was issued on the 21st day of February, 1884.

The Fulton Mining Company on the 5th day of July, 1886, conveyed the J. C. Johnston lode to William J. Anderson, and on the 17th day of June, 1887, he conveyed the same to The Standard Mining Company, the appellee herein. The premises were developed constantly by the Fulton company and its grantees, with the full knowledge of the appellant, so that its value had not only been demonstrated, but by reason of the expenditure of money and the assumption of those risks which are attendant upon all mining pursuits, had been increased from $4,800 on the 12th day of October, 1880, to $1,000,000 on the 15th day of October, 1887, when this suit was instituted. (Transcript, fol. 15, p. 9.)

Prior to the commencement of this action, however, the appellant had filed a bill of complaint against the Fulton Mining Company, Chatfield and others, which he claims to have based upon the same transaction; and praying for certain relief against a large number of individuals, together with the Fulton Mining Company. The bill in that case was filed in the United States Circuit Court for the District of Colorado, on the 23d day of September, 1885; and, nothing having been done therein, the action was dismissed about eleven months afterwards. The suit upon its face was one of which that Court had no jurisdiction, and was virtually abandoned. Afterwards and in August, 1886, a second suit, based upon the same transaction, was instituted against the Fulton Mining Company and others in the District Court of the State of Colorado, in and for the County of Pitkin, and that suit also was dismissed or aban-

doned. Afterwards and on the 15th day of October, 1887, the present action was instituted in the District Court of Pitkin County, and by the Standard Company transferred to the Federal Court, which, upon final hearing, entered a decree dismissing the bill as to the Standard Mining Company, and from that decree the case comes to this Court upon appeal.

It will be noticed in the course of the argument that the facts alleged in the bill of complaint are different in many material particulars from those which have been hereinabove narrated, and which have been taken from the testimony as disclosed by the record. It is not deemed necessary to incorporate in the above statement many important circumstances and details whose proper place will be found in connection with the argument upon the merits. I have only assumed to give such an outline of the controversy as is necessary to a general understanding of its history.

ARGUMENT.

I shall contend that the appellant is not entitled to a reversal of the decree of the Circuit Court, and that such decree is correct, because

1. The location of the "J. C. Johnston" was, as against the owners of the "Smuggler 2" location, absolutely void; hence the attempt to convey to Chatfield more than an undivided fourth interest in the premises embraced in that location was wholly inoperative beyond the original interest of the appellant in the Smuggler 2, and Chatfield not having acquired any additional interest, was absolved from the covenant to make

a re-conveyance, or to account for an undivided eighth, or any other interest in the property.

2. That the contract alleged in the complaint did not constitute the entire agreement between the parties; on the contrary, such agreement contemplated the formation of a corporation and the conveyance by Chatfield of every interest mentioned in said contract to such company when so incorporated.

3. That the complainant, if his action be for the specific enforcement of a contract, is barred by the statute of limitations of the State of Colorado, because his action was not instituted within five years from the time when it accrued.

4. That the complainant, if his action is founded upon fraud, is barred by the statute of limitations of the State, because his bill for relief was not filed within three years after his discovery of the facts constituting such fraud.

5. That the complainant, if his action be for the enforcement of a trust, is barred by the statute of limitations of the State, because his bill was not filed within five years after the cause thereof accrued.

6. Because the complainant, independent of the statute, has lost by laches any right which he may have had to invoke the jurisdiction and powers of a Court of equity.

7. Because the appellee and its grantors, Anderson and the Fulton Mining Company, occupy the position of *bona fide* purchasers for value.

8. Because the appellant has by his actions and conduct assented to and acquiesced in a disposition of the property in controversy different from

that provided for in the contract creating the trust, if any such trust existed.

9. Because the prospecting contract, under which the Smuggler 2 Lode Mining Claim was acquired, created a trust between the appellant and his associates, which prevented his disregard thereof and made his subsequent seizure, location and attempted appropriation of that claim a nullity.

10. Because such trust affected the property in the hands of the appellant and of Chatfield, who were charged with notice, and the latter's grantee by compromising with its beneficiaries properly executed it.

11. Because no right of action ever existed in behalf of the appellant against the Standard Mining Company by reason of anything appearing in the record and proceedings of this cause; and—

12. Because the conditions under which by the terms of the contract Chatfield was to re-convey an interest in the J. C. Johnston to the appellant have never existed.

1. THE LOCATION OF THE J. C. JOHNSTON WAS AS AGAINST THE OWNERS OF THE "SMUGGLER 2 LOCATION, ABSOLUTELY VOID; HENCE THE ATTEMPT TO CONVEY TO CHATFIELD MORE THAN AN UNDIVIDED FOURTH INTEREST IN THE PREMISES EMBRACED IN THAT LOCATION WAS WHOLLY INOPERATIVE BEYOND THE ORIGINAL INTEREST OF THE APPELLANT IN THE SMUGGLER 2, AND CHATFIELD NOT HAVING ACQUIRED ANY ADDITIONAL INTEREST WAS ABSOLVED

FROM THE COVENANT TO MAKE A RE-CONVEYANCE OR TO ACCOUNT FOR AN UNDIVIDED EIGHTH OR ANY OTHER INTEREST IN THE PROPERTY.

The Smuggler 2 Lode Mining Claim had been located on June 8, 1880, in all respects as required by the laws of the United States and the State of Colorado. It was perfected by the record of the location certificate within ninety days after the alleged date of discovery. It had been in the legal possession of Johnston under a surface location, called the Badger Boy, since some time in the year 1879. All work which had been done as preliminary to its location, as well as the surveys and subsequent developments, at least up to the 4th day of August, 1880, had been carried on under the prospecting agreement between Johnston on the one side and Atchison, Seaver and Dunscombe on the other. The wives of Dunscombe and Seaver, as the representatives of their husbands and of Atchison, were the owners in law and equity, subject only to the paramount claim of the United States of three-fourths of the location; and nothing short of their own abandonment or the operation of law upon their rights could deprive them of such interest.

As to the validity of the claim, I need not do more than quote the testimony of Johnston himself. He took the witness stand during the giving of testimony on four different occasions. At one place in his testimony he says: "The location (Smuggler 2) was made, and we struck no ore; we were in nothing but slide." (Transcript, fol. 333.) Again he says: "It was sometime the first of July that the ore was found, that the vein was

discovered." (Transcript, fol. 340.) In another connection he says: "At the time we struck this body of ore, it must have been about the middle of July, between the 15th and 20th; may be a little later than that" (transcript, fol. 239). Again he says: "I bought my grub of Mr. Crittenden and we worked right along until about the 1st of August, when we struck ore in the J. C. Johnston location, which was then the Smuggler 2" (transcript, fol. 335). Also, "The vein was discovered before Mr. Atchison came in—Atchison came in a few days after we cut the ledge, some time in July" (fol. 340). Again, "Seaver and Dunscombe started out to get grub; after they had been gone out a week or ten days Mr. Atchison came in. He came a few days after I had cut the ledge on the Smuggler 2, after I discovered the mineral" (transcript, fol. 375). The date of Atchison's arrival is indicated by appellant where he says that Dunscombe and Seaver left some time the first of June (transcript, fols. 375–6). Once more: "I told him, Atchison, we had made a discovery there and took him up and showed it to him. We had some ore piled on the dump, a ton or two of low grade ore" (transcript, fol. 376). In his last testimony (transcript, fol. 239), and after time for reflection upon the consequences of the above statements, he testifies: "Well, when Mr. Atchison was here there was no vein; we had some ore, of course; we had been getting ore along the slide for some time, up, probably, thirty feet, before we came into the body of ore, along the slide, the loose rock, lumps of ore, pieces of ore; that is what we had when Atchison was here."

Turning again to his first testimony, we find the following question and answer: "How long after you struck that ledge of mineral did you survey the ground as the J. C. Johnston—how long after Atchison was there?" He answers, "Something like a month, I can't remember exactly, probably a month, three or four weeks anyway" (transcript, fol. 377 and 385). Again: "The ledge was cut some time before the Johnston location was made, probably two or three weeks" (transcript, fol. 340). Once more: "The location of the J. C. Johnston was made right away after the ore was found; it was within a few days" (transcript, fol. 340). Again: "After I had discovered ore, Mr. Crittenden came to me and said, 'I will assume all indebtedness and pay the men if you will locate this again—this Smuggler 2—and give me half of it and I will give you so much money—$2,000 I think—besides pay you $100 a month and pay you something down.' Finally I concluded I would do it" (fol. 339). "Did you discover the apex of the Johnston?" "I think I did" (fol. 355).

A proper climax to these diverse and contradictory statements occurs (transcript, fol. 247), in appellant's last testimony, where, referring to the period of the Johnston location, he says: "I could not swear positively that we cut the ledge at all."

An analysis of these varied and incoherent statements discloses that the vein was discovered about July 1st, that it was discovered between the 15th and 20th of July, or perhaps later; that it was discovered about the 1st of August; that the J. C. Johnston claim was surveyed about a month after

he struck the ledge; that the latter was cut about three weeks before said location; that the said location was made immediately after the ledge was cut; that he could not swear positively that he ever cut it; that the vein was discovered prior to Atchison's arrival, and that when he arrived the vein had not been discovered. If this testimony (?) is compared with the evidence of Mr. Seaver, who states that the vein was cut in the tunnel some time in June (and that must have been prior to the 8th day of June), as Johnston says (transcript, fol. 333), that the location was made one day and the surveys were made out the following night and they carried the certificate out with them and put it on record), together with the corroborating circumstance that although the claim was located in April it was not surveyed until June, and probably not until the development had disclosed a vein, there can be little if any doubt but that Johnston, conscious of the necessity of showing that the Smuggler 2 location was invalid, instead of relying upon the alleged abandonment thereof by his associates, attempted to place the discovery of mineral upon the ground at a time practically contemporaneous with the location of the Johnston claim. Further corroboration of this fact appears from the admission of Johnston that the seventy-two foot tunnel had a shaft started from its course, which tunnel cut the ledge. Seaver, who left on the 9th of June, worked in the tunnel and knew of the shaft which was sunk thirty feet deep prior to his departure. That shaft Johnston admits was sunk upon the ore. He also cut it in what he called the Long Tunnel, all of which work was done by Johnston

prior to August 4th, for on that day he located the J. C. Johnston claim, and on the next day he left the mine and never returned except to revisit it during that and the following year.

It is hardly necessary to do more than to remind this Court that the location of a mining claim made in accordance with the requirements of the law confers an absolute title upon its locators, subject only to the paramount claim of the United States, and that as against all the world beside the title of such locators is as valid and impregnable as though a patent had been granted therefor by the Federal government.

Armstrong vs. Lower, 6 Colo., 395.
Gwillim vs. Donnellan, 115 U. S., 49.
Wolfley *et al*, vs. Lebanon Mg. Co., 4 Colo., 119.
Chapman vs. Toy Long, 4 Sawyer, C. C. 34.
Belk vs. Meagher, 104 U. S., 279.
Omar vs. Soper, 11 Colo., 380.

But it may be conceded, for the sake of the argument, that the discovery of a vein in rock in place within the boundaries of the Smuggler 2 was not actually made until the 4th day of August. Such discovery, as to all the world, except those who might in the meantime have lawfully acquired some right to the ground, is as good as though it had preceded the setting of the stakes marking its boundaries.

Strepey vs. Stark, 7 Colo., 618.
Zollars vs. Eshelman, 2 McCrary, 39.
Mining Co. vs. Mining Co., 6 Sawyer C. C., 309.

Mining Co. vs. Mining Co., 7 Sawyer, 114.
Craig vs. Thompson, 10 Colo., 517.
Van Zandt vs. Argentine M. Co., 2 McCr., 159.
Wight vs. Moffat (Vanderbilt vs. Maid of Erin), 10 Copps' Land Owner, 392.

If, however, there had been no discovery of a vein at any time, and, consequently, no compliance in that regard with precedent conditions of the law, yet the appellant could not, by assuming to make another location, in which the names of his co-tenants did not appear, deprive them of their right and interest in and to the ground embraced by the Smuggler 2 location. Contracts like that between the appellant and Atchison, Seaver and Dunscombe are matters of common occurrence and usage among miners, whose rights arising thereunder have frequently been recognized and defined by the Courts. There is nothing peculiar to this agreement which distinguishes it from similar ones, whereby one party is required to furnish provisions and pay the expenses, and the other to perform labor in the effort to acquire property in mineral lands. It was prepared by the parties themselves, and when acts executed thereunder progressed so far as to invest the parties thereto with tangible interests in mining property, the arbitrary act of no one or more of them against the other could operate to his disadvantage.

It has been frequently held that such a contract constitutes what is generally known as a mining co-partnership, which is distinguished from ordinary co-partnerships by limitations necessarily

placed upon them by reason of the peculiar character of the business to which they relate.

Chadburn vs. Davis, 9 Colo. 583.
Skillman vs. Lackman, 23 Cal. 198.
Hirbour vs. Reeding, 3 Mont. 15.
Jennings vs. Rickard, 10 Colo. 395.
Settembre vs. Putnam, 30 Cal. 490.

A mining partnership is made by a prospecting contract.

Eagle vs. Butcher, 6 O. St. 295.
Boucher vs. Mulvihill, 1 Mont. 306.
Lawrence vs. Robinson, 4 Colo. 567.

So far has this doctrine been carried that it has been held that where a prospector shows to another "float ore" which he had found, and that other been held that where a prospector shows to another commences to prospect for the lode upon joint account, which, when found, he recorded in his own name, he would be compelled to make a conveyance to such prospector for half the lode.

Sears vs. Collins, 5 Colo. 592.

When a prospector places upon a discovery stake the name of another, and that other has an interest in the claim so staked off, which he cannot be divested save by judicial proceedings or by his own consent; and in the event the name is erased and not included in the location certificate he can compel a recognition of his rights upon offering to bear his proportion of the consequent burden.

Jennings v. Rickard, 15 Mining Reports, 624, S. C., 10 Col., 395.
Fuller v. Harris, 29 Fed., 814.
Gleason v. Mining Co., 13 Nevada, 442.

It is no doubt true that until the joint undertakings and efforts under the contract shall have resulted in the discovery of a vein, or the marking of boundaries of the location, survey and record of the claim, the property interests of the parties rest *in fieri*, and may be lost by the refusal or failure of either party to perform the contract.

Murley v. Ennis, 2 Colo., 300.

Johnston v. Robinson, 16 Fed. Rep., 933.

If, however, the preliminary steps have been taken and there has been no refusal of any of the parties to go on with the contract, there is no power in any of the parties to it to deprive his or their associates of any of the fruits thereof. When a claim has reached the point of development to the extent of proper location and record, the Courts apply to it the rules appropriate to real property. It is liable for the debts of its owner, descends to the heir, and can only be conveyed by deeds executed in accordance with the law concerning conveyances.

Armstrong v. Lower, 6 Colo., 395, 582.

Harris v. The Equator Co., 8 Fed. Rep., 863

Forbes v. Gracey, 94 U. S., 766.

Alexander v. Sherman, 16 Pac., 45.

McLaughlin vs. Thompson, 2 Cal. App., 29 Pac. Rep. 816.

The record clearly shows that the Smuggler claim had passed through all the initiative stages of discovery, location and segregation, and was in the possession of Atchison, Dunscombe, Seaver and Johnston when the latter seized and appropriated it to his own use, or at least attempted to do so. He is now contending

against the claim and title, legal and equitable, of himself and his former associates, and virtually assumes, although he declares himself to have been a man of ripe experience in the matter of acquiring title to mining property which was not true of his associates, that he deliberately misled, deceived, cheated and defrauded his partners when he located the Smuggler 2 for them, and pretended that it was valid and lawful. He does this that he may profit thereby and be protected and recognized in the ownership of property resulting from this fraud, and from the expenditures of his associates which he thus induced. His position virtually is this: "I located the Smuggler 2 for myself and my partners to whom I represented the location to be good; I signed a location certificate with them on the 8th day of June, 1880, which recited a discovery in April, and I encouraged them in prosecuting work of development and survey and record at their expense. I discovered a vein subsequent to such location, and within ninety days thereafter. I held possession of the location for myself and for them; and afterwards, and on the 4th day of August, without their knowledge and consent, and having been tempted thereto by Crittenden, in consideration of $2,000, and upon the pretense that they not having promptly paid the indebtedness, had forfeited all right to the premises, I assumed to re-locate said claim, by which means I obtained a half interest instead of a quarter interest therein, and generously gave the remainder to two outside friends who had full notice of the rights of my co-partners, and who, for their interest, agreed to pay the ex-

penses which had accumulated against the Smuggler 2 location. It is true that the work upon which the Johnston was located had been paid for in whole or in part by Atchison, Seaver and Dunscombe, who were responsible for any outstanding liabilities, and that my discovery was under a contract which, up to that time, I had recognized as binding between us. It is true that I was the only party to said contract who assumed to have experience in the location of mining claims and the discovery of mineral, whereby I successfully invited the confidence of my associates in the venture and encouraged them in their expenditures, and which confidence I have deliberately betrayed; nevertheless I am entitled to one-half of the J. C. Johnston claim and they are entitled to nothing."

Under these circumstances I assert that he is estopped from making any claim whatever to the J. C. Johnston location beyond the original one-fourth interest which he had in the Smuggler 2.

Lessee of Merritt vs. Horn, 5 Ohio St., 318.

Seaver vs. Gregovich, 16 Nev., 326.

Herman on Estoppel, 336, and cases cited;

and see

Erhardt vs. Boaro, 113 U. S., 537.

The fact, if it be one, that Atchison and his friends failed to furnish money as required by the contract, in consequence of which the credit of the enterprise had become exhausted does not affect the question. Their liability under the contract was absolute, and their property subject to attachment therefor. No assumption of such liability by Crittenden and Adair could, without their consent and that of the creditors, discharge them. Appel-

lant did not inform them that their credit was exhausted, nor did they manifest any disposition to abandon the enterprise, but its joint prosecution continued until the discovery of mineral. I concede that if Atchison, Seaver and Dunscombe had notified appellant they would go no further under the contract, or if by their actions they had indicated an intention to abandon the enterprise, he would have been at perfect liberty either to re-locate the property, or, assuming the original location to have been valid, to have amended it by excluding their names from all connection therewith. And upon the theory of abandonment by Atchison, Seaver and Dunscombe, *and upon that theory alone*, is this action founded. In his complaint duly verified by the appellant he positively alleges that "after the location and long before the discovery of any vein within the limits of the Smuggler No. 2, Atchison Dunscombe and Seaver, and their said wives Margaret and Belle, *abandoned said mining claim and location* and failed and refused to pay or furnish to plaintiff any part of the expenses, etc., but that plaintiff continued to work and develop the ground covered by said claim on his own account and at his own expense" (transcript, fol. 6). This theory too, is an after thought, for nothing was said about it when Crittenden suggested a re-location for his own benefit.

Johnston never regarded the Smuggler 2 as an abandoned claim. On the 14th day of September, 1880, he bonded half of his interest therein to Chatfield, together with a fourth of the J. C. Johnston and other property therein specified. The bond of September 14th is printed in the record so

that the premises appear to have been called the "Smuggler Cad" lode. The certified copy of the bond uses the word "lead" and not the word "cad". It will not be claimed that the appellant was at the time interested in any Smuggler claim other than the Smuggler 2. On the 12th day of October, 1880, in carrying out the terms of his agreement of that day with Chatfield, he conveyed to Thomson and Sayer the whole of the Smuggler 2 location. This was done as he says to protect Chatfield, but from what? Surely from the consequences of a proceeding to test the validity of the J. C. Johnston location, and to invest him with title to one-fourth of the ground by whatever name it might be called or by whatever location it might ultimately be patented. There is little consistency in asserting that the others had abandoned a claim which appellant himself had not relinquished.

In the bill which he filed in the United States Court 1885, and of which his counsel in the last case must have had notice when they prepared the present one, he says (transcript, fol. 294) that no mineral in rock in place was ever discovered in the Smuggler 2, and also that Dunscombe, Atchison and Seaver refused and neglected to comply with their covenants and agreements.

Abandonment is a question of intention, and that intention must be gathered from the acts and statements of the individuals interested. The record shows that the appellant either swore falsely when he verified his bill of complaint or when he gave his testimony. The latter being the result of direct and counter examination, and more in har-

mony with the statements of his former associates, demonstrates that there never was any abandonment or thought of abandonment by Atchison, Seaver or Dunscombe.

Newbaumer vs. Woodman, 26 Pac. Rep., 900.

Derry vs. Ross, 5 Colo., 292.

Another evidence of his never having regarded the Smuggler 2 as an abandoned location is furnished by his testimony. He says that the conditions under which he located the J. C. Johnston were among other things that Crittenden should pay up the indebtedness of the old location, and if he failed to do so, then the new one was to be "no go." Crittenden did not do so. On the contray, he sold to Atchison and surrendered the certificate; the indebtedness having been subsequently paid by the Smuggler 2 owners, as shown by their own and the testimony of Koch and Millar.

A party cannot make a valid re-location of lands legally possessed by another until the owner's rights have been abandoned, forfeited or otherwise ended.

Weese vs. Barker, 7 Colo., 178.

North Noonday Co. vs. Orient Co., 11 Fed R., 125.

Belk vs. Meagher, 104 U. S., 279.

Lockhart vs. Rollins, Idaho, 21 Pac., 413.

Faxon vs. Barnard, 4 F. R., 702.

Phoenix M. Co. vs. Lawrence, 55 Cal., 143.

It will be observed that the J. C. Johnston is a practical re-location of the Smuggler 2; not only its boundaries, but its discovery work, and other work as well, are adopted in the location. That fact of itself

demonstrates its invalidity as to the other owners of the Smuggler 2, because a re-location is an implied admission of the validity of the original location, and the assertion that the re-locator claims forfeiture by reason of a failure on the part of the original locator to perform his obligations.

Wills vs. Blaine, 20 Pac., 789.

The location of the J. C. Johnston was absolutely void as against Atchison, Dunscombe and Seaver for still another reason: The ground was in their actual possession through Johnston, who was the common representative of all the parties to the contract. No title to a mining claim can be initiated in ground which is in the actual lawful possession of another seeking to comply with the terms and requirements of law in its acquisition.

Faxon vs. Bernard, 4 F. R., 702.
Omar vs. Soper, 11 Colo., 380.
Erhardt vs. Boaro, 113 U. S. 537.
Taylor vs. Miller, 6 Colo., 41.

It will be remembered that upon his discovery of this fraudulent location, Atchison at once proceeded to Leadville, where he overtook the conspirators, who were then attempting to palm off their fraud upon some other individual, and compelled a surrender of the location certificate of the J. C. Johnston and a conveyance by Crittenden and Adair of whatever interest they claimed therein. This was a positive abandonment by the three of their Johnston location. By their acts they confessed the irregularity of their action and consented to its effacement. The subsequent conduct of Johnston in recording a location certificate of the J. C. Johnston location, which he did not do until a week

after he had bonded a fourth of it to Chatfield, and attempting to dispose of it upon the basis of his ownership of a half was as bald and conscienceless a fraud as was ever perpetrated upon innocent men. Its effrontery is only equalled by his conduct in filing this bill and impudently charging others with fraud, and assuming that, because a patent was obtained for the premises under the J. C. Johnston lode location, and after his victims had maintained their rights, therefore, it was valid as against the Smuggler 2 owners, from its inception to its ending.

He who seeks equity must do equity. This is a maxim of which the appellant, doubtless, never heard. If, however, we assume that, by subsequent acts or conduct, the validity of the Johnston location has been recognized and that location adopted and acted upon by those interested, the appellant never had any greater interest therein than he possessed in the Smuggler 2. He says, when he surrendered the Johnston location certificate to Atchison, the latter agreed to pay him what he owed and square up the debts of the concern. This Atchison was liable for in any event, and his promise did not in any wise impose upon him a new responsibility or give Johnston a new privilege. Even if it did he should have asserted it in the courts of justice and compelled its performance in a legal way. He could not by reason of Atchison's disregard of his contract revive the Johnston location and assume to be the owner of a half interest or a quarter, which he did by making and recording a second certificate, "a manufactured location," as

Crittenden called it when in December, 1880, he informed the witness Browne of the fact.

On the 12th day of October, 1880, he sold to Chatfield absolutely an undivided quarter of the J. C. Johnston mine. This he alleges in both the bills of complaint which appear in the transcript, and admits in his testimony. *He can only ask for the re-conveyance or recognition of his right to an undivided eighth as against anyone upon the theory that his title to one-half of the J. C. Johnston has been established.* Upon what principle of reasoning can it be for one moment contended that his right to such half has ever been in the slightest degree recognized, established or existing? Such a contention seems ridiculous. Its only possible basis can be that at the time of the location of the Smuggler 2 no vein or mineral had been discovered therein. This basis disappears when we refer to the fact that when a discovery of a vein is made within the boundaries of a mining claim subsequent to its location, such discovery relates back to that location and renders it valid *ab initio.*

Mining Co. v. Mining Co., 6 Sawyer, 309.
Mining Co. v. Mining Co., 7 Sawyer, 114.
Craig v. Thompson, 16 Pac. 24.
McGinnis v. Egbert, 8 Colo., 45.
Zollars, et. al. v. Evans, 2 McCrary, 39.
Strepey v. Stark, 7 Colo., 618,

The fact that the premises in controversy were ultimately patented, as the J. C. Johnston does not in any wise affect this question, will be appropriately considered under the tenth division of this argument.

2 THE CONTRACT ALLEGED IN THE COMPLAINT DID NOT CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES; ON THE CONTRARY, SUCH AGREEMENT CONTEMPLATED THE FORMATION OF A CORPORATION AND THE CONVEYANCE BY CHATFIELD OF EVERY INTEREST MENTIONED IN SAID CONTRACT, TO SUCH COMPANY, WHEN SO INCORPORATED.

The written contract of October 12, 1880, constituted but a fraction of the entire agreement between the parties. If we are to believe the allegations of the complaint, the agreement, in addition to what was reduced to writing, provided that the plaintiff was to convey his remaining fourth interest in the J. C. Johnston mine to Chatfield, that the law firm of Thomson and Sayer would defend that title against the Smuggler 2 title, that Chatfield would perfect the J. C. Johnston title by applying for and obtaining letters patent to the same, after which he would re-convey to the appellant an undivided eighth of the J. C. Johnston free and clear of all claim for expenditures of whatsoever kind; that he would hold the remaining eighth of the J. C. Johnston to pay Thomson and Sayer for their legal services to be performed, but if such services should not become necessary and should not be performed, then Thomson and Sayer would receive nothing, but the eighth reserved for them should be reconveyed to the plaintiff (complaint, fol. 9, p. 6). If we are to believe the appellant's testimony, it was also talked over and understood that a corporation should be organized for the working and development of the property, to which Chatfield should convey the J. C. Johnston mine, and that the making of such incorporation

and conveyance was fully understood as a
the contract (transcript, fols. 346, 348, 350

Thus he says: "Of course the understand
the talk was that if Chatfield got this deed
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to be re-invested with the title to any portion of
the premises. He also swears:

"We were talking about forming a company and
stocking it. We agreed to have the claim patented
and perfect the title of the J. C. Johnston, and he
agreed then to give me back my one-eighth interest
either in stock or Mr. Chatfield would deed it back to
me."

Again: "Did you know anything about the in-
corporation of the Fulton Mining Company?"

"There was no name. We didn't name the Ful-
ton Mining Company; they had talked among
themselves about organizing a company, but I didn't
know anything about the name of it and didn't
hear anything about it until I got back from Wood
River in 1883."

He also testifies: "Did Chatfield say anything
about deeding it to the company?"

"Of course, the organizing of the company was
talked over, and we were talking about it, if Duns-

combe, Seaver and Atchison *would not put in their interest*, if we organized the company—put in their interest they had purchased from Crittenden and Adair—and this was all talked about."

Also: "When you had this talk about the stock company with Chatfield, did Thomson and Sayer take any part in the conversation?"

"Yes, sir."

"Was there anything said about who should compose the stock company?"

"Well, of course, the understanding—the talk was if Chatfield should get this deed from Crittenden and Adair, that Chatfield, Thomson, Sayer and myself would be the stock company."

"Anything said about Wilson?"

"Yes, sir; Wilson——"

"Anything about Dunscombe?"

"No, sir, nothing said about Dunscombe?"

Once more:

"The title of the other one-eighth interest was to be returned to me by Chatfield or the company."

If we are to believe the testimony of Mr. Chatfield, the matter of the incorporation was talked over in connection with the making of the contract. If we are to believe the allegations of the bill filed in the United States Court in 1885, Chatfield informed appellant that he, Thomson, Sayer, Dunscombe (Thomson's brother-in-law) and Wilson intended to form a company for the purpose of holding, patenting and working the property, and that if appellant would assist them by making over his remaining interest he should have all the advantages of the company, and that the company and Chatfield as its agent, would, with-

and conveyance was fully understood as a part of the contract (transcript, fols. 346, 348, 356, 357).

Thus he says: "Of course the understanding—the talk was that if Chatfield got this deed from Crittenden and Adair, that Chatfield, Thomson, Sayer and myself would be the stock company"——

That Thomson and Sayer, who were to have no interest in the mine, unless there should be litigation concerning the title, demanding their legal services and receiving the same, should, nevertheless, have been agreed upon as directors is incredible. This statement serves to illustrate the utter falsity of appellants contention as to the terms of the original contract and of the conditions under which he was to be re-invested with the title to any portion of the premises. He also swears:

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out expense to appellant, make over to him in shares of the company the full value of his interest, which would be held in trust for him. That this was said and done in the presence of Thomson and Sayer, and Dunscombe had full notice thereof before and at the time of the incorporation of the company; that Chatfield was then and there acting for the company, all the members of which had full notice. He then alleges the organization of the company, and that Chatfield, Thomson and Sayer advised him that as he was a laborer and away from Leadville much of the time it would be more advantageous for him to join them in forming a stock company, that Chatfield would convey all his interest in the J. C. Johnston claim to the company to be formed and incorporated, and afterwards whenever requested thereto by appellant the company would convey and transfer to him a quarter interest of its shares of mining stock, in consideration of which he made the conveyance and in consequence of which he sought to recover the said stock from the Fulton Mining Company and the other defendants in said cause.

If we are to believe Mr. Johnston as to another feature of the contract, an additional agreement was that if the premises were patented as the J. C. Johnston, he would be entitled to a conveyance of an undivided eighth from Chatfield (transcript, fols. 344-46). The contract between the two men, therefore, in addition to that expressed in the written obligation, contemplated the formation of a company and the conveyance to it from Chatfield of the J. C. Johnston title. It also contemplated the acquisition of a patent by appropriate pro-

ceedings for that purpose to be instituted by Chatfield. It also contemplated the reconveyance to Johnston of a fourth interest in the property in the event the legal services of Thomson and Sayer should not become necessary. It also contemplated the transfer of one-fourth of the stock of the Fulton Company in the same contingency. It also contemplated the recognition in Johnston of an undivided eighth interest in the premises until the successful termination of some litigation which Chatfield had covenanted in the written part of the agreement to institute for the protection of the title of the J. C. Johnston.

The appellant's right of action must be determined by a reference to the entire contract and not to the part of it which appears over the signature of himself and Chatfield. It is true as a general proposition that when contracts are reduced to writing their terms cannot be varied, explained, modified or controlled by parol testimony concerning other matters not in the contract, but which were mooted between the parties, either prior thereto or contemporaneously therewith. This rule however has its limitations; and in a court of equity more than one exception. I think it will not be disputed that it appears from the record that the appellant, in addition to the written contract, agreed with Chatfield that if he and his associates organized a corporation for holding and handling the J. C. Johnston lode mining claim, appellant should receive an eighth interest in the capital stock of the company instead of a similar interest in the mine itself; and that the appellant not only made no objection to the receipt of testimony con-

cerning this additional oral agreement, but himself testified concerning it.

The principle above recognized, which prohibits one from varying a written contract by oral testimony, exists for the benefit and protection of the adversary of the party, but not for him who offers it. The latter cannot complain if he voluntarily pleads and proves an oral agreement extending the terms of his written obligation, and which, through confidence, inadvertence, mistake, intention or omission was not incorporated therein. The appellee could invoke the rule against him, but the appellant cannot invoke it against himself.

The reason for the rule is that it would tend, in many instances, to substitute a new and different contract for that which was really agreed upon, to the possible prejudice of one of the parties.

1 Greenleaf on Evidence, Sec. 275.

The party to be prejudiced is, of course, the one against whom the testimony is offered, not the one who offers it without the objection of the other.

2 Starkie Evidence, 544.

Especially is the appellant precluded from objecting to the consideration of any agreement not embodied in the written contract, if it appears that the appellee has performed it and such performance has been ratified and confirmed by appellant by a demand for his part of the stock in the corporation, the creation of which was provided for in such agreement. Instead of promptly repudiating the act of Chatfield in creating the corporation and conveying the J. C. Johnston to it, as he should have done, if not contemplated by the terms of the contract, he

demanded the stock upon the ground that his agreement with Chatfield authorized him so to do. Under these circumstances, the appellant cannot, in this Court, repudiate or deny any part of the obligation.

Davis vs. Goodrich, 45 Vt., 56.

Preston vs. Preston, 95 U. S., 202.

"Upon the basis of part performance where possession has been taken, or the acts done amount to part performance, the Court may receive parol proof of the whole agreement, independently of, or in connection with, what may be in writing, in order to make out the contract."

Waterman Spec. Per., Sec. 266.

"Where an agreement has been executed or in part performed by the complainant, and the acts done place him in a situation which is a fraud upon him, unless the agreement is executed, equity will not permit defendant to protect himself from executing his part of the agreement by pleading that it was not in writing."

Dean vs. Anderson, 34 N. J. Eq., 500.

Waterman Spec. Perf., Sec. 249.

Pomeroy Contracts, 103, 104.

Story Eq. Jur., 759.

Where the equities are with the defendant the same principle is applicable to the complainant.

In a proceeding for specific performance, where there is no fraud or mistake, a written agreement binds the parties in law and in equity according to its terms, although an additional provision was verbally agreed to, and the party insisting upon the written agreement alone may recover at law, whilst the other party, the defendant in equity, could require the Court to be neutral, unless the

plaintiff would consent to the performance of the omitted term.

2 Sugden on Vendors, page 246.
Price on Specific Performance, Sec. 489 and following.
Martin vs. Pycroft, 2 De G. M. & G. 785.
Quinn vs. Booth, 19 Conn., 37.
Hart vs. Johnson, 4 Allen, 259.

The importance of this feature of the contract lies in the fact that if Johnston agreed with Chatfield that the latter could incorporate a company and convey to it the mine in question, he cannot ask for the re-conveyance of that interest to him by the company or its successors; nor can he ask that such company or its successors be decreed to convey to him the stock representing such interest; but, on the contrary, he must look to the man with whom he contracted and receive compensation from him or go without it. That this is the law, we shall attempt to establish hereafter.

That evidence showing the existence of this collateral agreement is competent, there can be no doubt.

Ware vs. Allen, 128 U. S., 490.
Pym vs. Campbell, 16 Ellis & Blackburn, 370.
Michaels vs. Olmstead, 4 McCrary, 549.

The rule confining parties to the writing does not apply in cases where the original contract was verbal and entire, and a part of it only was reduced to writing.

1 Greenleaf on Ev., Sec. 284 A, 14th Ed.
Chapman vs. Dobson, 78 N. Y., 74.
Julliard vs. Chafey, 92 N. Y., 529.

That the appellant will assume to challenge the correctness of this view is to be anticipated. If he does, he certainly cannot deny that Chatfield as a matter of fact did, in December, 1880, incorporate the Fulton Mining Company, convey the J. C. Johnston Mine to it, and issue its stock in payment therefor. He cannot deny that all this was done without the slightest objection or protest upon his part, and consequently he must be held to have ratified that which, though not originally authorized, had nevertheless been done. This ratification being equivalent to a previously conferred authority, is all sufficient to support the proposition that the contract alleged is not the contract sued upon, but only a part of it, and that since it appears that the company took the title to the property with the full knowledge and subsequent assent of Mr. Johnston, its title can in no wise be clouded or weakened by the assertion of any right on the part of the appellant under such contract to compel the re-conveyance to him of an undivided eighth or any other interest therein.

Counsel for appellee will probably contend that any agreement not embraced in the writing concerning which parol testimony will be received must be strictly collateral to and not in conflict with the written covenants. As said by them before the trial Court, a collateral contract is one which runs with and not counter to the written agreement; in which case the oral contract is consistent with and not repugnant to the written one. A number of authorities in support of that proposition will doubtless be relied upon, some of which

are from the Colorado Reports. To this proposition it may be said:

First—That the additional agreement disclosed by the record was not only advanced in the first instance by the appellant and in his own behalf, but has been executed by Chatfield with the knowledge, consent and approval of the appellant. These circumstances will surely be given due consideration in a Court of equity.

Second—The authorities relied upon by the appellee are mostly cases at law in which the rule confining individuals to their written covenants and excluding all previous or contemporaneous understandings is applied with greater strictness than in equity where the conditions under which the objects for which contracts are entered into, are frequently essential to a proper determination of the equitable rights of contestants; and, *third*, the additional contract is collateral to that part which is in writing. The appellant having asserted and ratified it by demanding and suing for stock, he cannot evade or defeat the consequences of his conduct by asserting that his verbal agreement violates the terms of the written one. There is no antagonism between the two, for the ownership of appellant is just as effectually evidenced by shares of stock in the company as it could be in the event he received a deed therefor instead. Although the appellant proved a more extensive agreement than the one alleged, he failed to prove in its entirety that which was alleged. Except his unsupported statement, there is nothing in the record to show that the eighth interest in the mine intended for Thomson

and Sayer was ever to be reconveyed back to him. The written agreement is silent concerning it; the testimony of Chatfield and Sayer refutes it. The fact that three days after the contract and on October 15, 1880, Chatfield conveyed to Thomson and Sayer the eighth in question, goes to show that no such agreement existed. The making of this conveyance is testified to by Chatfield and also by Sayer, and there is nothing whatever in the record to show that the appellant was ignorant of the fact at the time. On the other hand, his bill alleges the creation of the Fulton Mining Company and the making of a conveyance by Chatfield thereto, and does not negative the idea that appellant knew nothing about it at the time. On the contrary, the record of both under the requirements of the law of the State imparted conclusive notice to him of what had been done, and he cannot now deny either that he was ignorant of these circumstances or that he did not authorize them. What becomes of his claim for specific performance of the Chatfield contract against the Standard Mining Company when these things are considered, whether the Smuggler 2 was a valid location or whether it was not?

In this connection it may be important to note that appellants expressed distrust of Thomson and Sayer and his consequent conveyance of the interest in the J. C. Johnston location intended for them, to Chatfield in trust, is in strange contrast with his conduct in making a deed *on the same day* to Thomson and Sayer, of the Smuggler 2 location, and also in leaving his contract with them, upon their promise to record it for him. By so doing, he placed it in the power of those whom he distrusted to de-

prive him of all interest in the premises by securing a recognition of the Smuggler 2 location, or by refusing to account, in any manner for their action in the event the integrity of such location should be judicially determined. All of appellants actions prior to and at the time of the execution of the Chatfield contract, are in direct conflict with the averments of his bill, and they are in turn contradicted by those of the bill of 1885—which were made at a time much nearer to the events to which they relate, and presumably when his memory was much better than it was in 1887.

3. THE COMPLAINANT, IF HIS ACTION BE FOR THE SPECIFIC ENFORCEMENT OF A CONTRACT, IS BARRED BY THE STATUTE OF LIMITATIONS OF THE STATE OF COLORADO, BECAUSE HIS ACTION WAS NOT INSTITUTED WITHIN FIVE YEARS FROM THE TIME WHEN IT ACCRUED.

It is a task of some difficulty to accurately determine whether the appellant seeks by his bill to specifically enforce a contract, asks for relief by reason of a fraud practiced upon him by the defendants, or some of them, or treating Chatfield as a trustee, and his grantees as the owners of property, charged with a trust of which they had notice, demands that such trust shall be recognized by or enforced against them. The prayer of the bill, while no part of it as a pleading, ought to convey some idea of the theory of appellant's counsel as to the character of his cause of action, but it does not. The testimony taken in his behalf renders the problem but the more difficult, while the bill itself is susceptible of the three differing con-

structions. The principle that the averments of a pleading must be taken most strongly against the party who files it has no application; for one conclusion is as disastrous to the appellant as either of the others, since, in any event, the Colorado statute of limitations affords a complete bar to the action. It is probable that the gravamen of the bill is the fraud alleged to have been practiced upon the appellant before, at the time of and subsequent to the execution of the contract; but there is good ground for assuming that the bill is one for specific performance, and, if so, we should determine when the cause of action accrued.

The details of the written contract are set forth in the bill with some particularity, and its breach is assumed to have occurred when the patent issued, and Chatfield thereafter declined to recognize the appellant's equities. More than this, appellant expressly testifies that he was to have his interest when the patent was obtained (fol. 346). More than this, he says the proceedings which Chatfield was under the agreement to initiate were to include the acquisition of a patent (fol. 343). More than this, he learned that a patent had been obtained 1885, and then demanded a conveyance from Chatfield, which met with a refusal. The contract neither warrants such an interpretation, nor justifies the postponement of its performance to so remote a period, if it did. The cause of action accrued long prior to that time.

The agreement provides that if Chatfield shall prevail in certain legal proceedings which he is about to commence for the vesting of the legal title in him against persons who claim adversely to

him an interest in the J. C. Johnston claim, then, upon acquiring title by that means, he will convey an eighth of it to appellant. When the latter conveyed the property he said to Thomson and Sayer, "After the title is perfected I will have my one-eighth back, *and if we lose the case I will have nothing.*"

His counsel, conscious of his client's egregious blunder in stating that Chatfield's covenant required him to get a patent and then convey, directed his attention to the specific terms of the agreement, and received for reply the statement that the "contract was written of course after all this conversation," and that Chatfield had told him there was a suit pending which he must employ counsel to defend (fol. 344). The ludicrously false character of the latter statement is apparent when we reflect that if any suit were pending it must have been against Johnston himself, in whom the title to the Johnston location was then vested, and who, if any one, must have known of its existence. It finds a parallel in the bill, however, for therein the appellant deliberately swears that on October 12, 1880, Chatfield, Thomson and Sayer *represented to him* that a certain mining claim called the Smuggler 2 was in conflict with the J. C. Johnston mining claim, certain claimants of which had commenced, or were about to commence, legal proceedings, etc. That those men should inform appellant of that which he knew better than any one living, passes all comprehension.

The contract, then, required Chatfield to institute certain legal proceedings against adverse claimants, at least within a reasonable time, and if

he failed to do so, or put it out of his power to do so, the appellant's right of action was perfected. On December 14, 1880, and about two months after the agreement was made, he conveyed the J. C. Johnston title to the Fulton Mining Company. The deed was recorded on December 22, 1880, from which time Johnston was, under the Colorado statute, conclusively presumed to have had notice of it. From that time Chatfield was unable to bring the suit which he had agreed to institute, and whenever a party, by his own act, disables himself from fulfilling his contract, he thereby at once makes himself liable for a breach of it, and an action may at once be brought against him upon it.

Hill vs. Sumner, 132 U. S., 118.
Linn vs. Butler, 8 Colo., 355.
Lovelock vs. Franklin, 8 Q. B., 371.
Hochster vs. De la Tour, 2 E. & B., 678.
Lewis vs. Clifton, 14 C. B., 245.

The appellant's cause of action accrued, then, not later than December 22, 1880, or seven years and ten months before the bill was filed. The statute of limitations applicable to it is as follows:

"Bills of relief, in case of the existence of a trust not cognizable by the Courts of common law, *and in all other cases not herein provided* for, shall be filed within five years after the cause thereof shall accrue, and not after."

Sec. 2912 Mills' Annotated Statutes of Colo.

This is one of the cases "not otherwise provided for." Means of knowledge are the equivalent of actual knowledge, as I shall hereafter demonstrate.

But if it be contended that Chatfield designed

to convey the property to the Fulton Company with notice and upon the understanding that the latter should perform the conditions of the contract, the appellant is none the better off, for it contented itself with making application for patent and awaiting the attack of the Smuggler 2 owners. Meanwhile Chatfield, who was one of its officers, and who had bought an interest in an adjoining claim called the Kansas City, when he got the J.C.Johnston for the consideration that he would perform the assessment work for the whole claim as required by law, deliberately refused to do so in the spring of 1881 (fol. 433). This was after the bond of September 14th, 1880, had been satisfied by the contract and deed of October 12th. Chatfield then coolly relocated the Kansas City and called it the "Chatfield" lode. He informed appellant of the fact (fol. 353). At this time, no suit had been instituted by Chatfield against the Smuggler 2 owners, and it does not appear that he had pretended to Johnston that he had done so. This conduct on Chatfield's part was sufficiently significant to put any ordinary man upon inquiry; for if Chatfield, in violation of his contract, refused to do the necessary work on the Kansas City lode, and relocated it to the injury of his co-tenants, it was pretty certain that having secured title to the J. C. Johnston, under certain conditions, he would ignore them also. But Johnston, who knew he must be the principal witness for Chatfield in any suit that he might bring or defend in behalf of the J. C. Johnston location, went away to Idaho without so much as saying "by your leave," and, more than six years subsequent to the Kansas City re-

location, brings this suit for the enforcement of his contract.

If he should contend that this circumstance is not sufficient to charge him with notice, and that the institution of suits against Chatfield and the Fulton Mining Company, as owners of the J.C. Johnston title, by Atchison and others, in May, 1881, relieved Chatfield of the necessity of bringing action against them, what shall be said of his inaction from the date of their adjustment to the 14th day of October, 1887? The offer of the complainants in those cases to receive stock of the Fulton Mining Company, in settlement of their claim, in an amount proportionate to the extent of their interest, was accepted on April 25th, 1882, (fol. 576-8) and ratified by the stockholders through their resolution to provide for an increase of the capital stock of the company, on June 6, 1882 (fol. 579.) If this settlement was to be construed by appellant as the equivalent of a complete recognition of the supremacy of the J. C. Johnston title, and a resultant right on his part to a reconveyance to him, by Chatfield or his grantors, of an eighth interest in the property, he should have said so in apt time. There seems to have been no concealment of the fact by those who conducted the negotiations. It is no excuse that he was absent from home. He should have had some representative to look after his affairs. He was not away by the connivance or deception of Chatfield. And when he did return, he was content to make some inquiry of Chatfield without exerting himself to ascertain whether the latter was deceiving him or not. He had abundant means of information, but neglected to avail him-

self of them. Can he now be heard to say that he proceeded with his suit within the time fixed by law ?

But he admits that he knew all about the settlement, or, if not, that he was told by his own and Chatfield's counsel that there had been a compromise. He knew this in 1881, or, giving him the benefit of every explanation made for him by his solicitors, he knew it not later than March, 1882. I quote from his testimony (fol. 349).

"Q. When did you go to Wood River? A. I went to Wood River in 1882—in March, 1882, I think. I went to Aspen in 1881, went to Leadville, and went to Thomson and Sayer's office and asked how the case was, and he said it was compromised, and I said I would like to take the papers to copy them, and he gave them to me, and I took the papers and looked them over and went down to have them copied, but found out it would cost too much, and so didn't do it.

"Q. What papers ? A. Contract between Chatfield and I, Crittenden, Adair and I, and a copy of the original grub-stake contract between Dunscombe, Seaver and I. I supposed there was a contract between Chatfield and Thomson and Sayer, and I wanted to copy that more than anything else. I don't think that was among the papers."

While there may be a little confusion here, as to dates, it is certain that the visit to Thomson's office preceded appellant's trip to Wood River, and that this trip was made in the spring of 1882. Now appellant was informed by the very man who above all others was competent to give him

the information that the litigation was compromised. He did not ask how nor why there had been a compromise, nor why he, as the principal witness and an interested party, had not been consulted, but contented himself with asking for the papers which he intended to copy, or have copied, and even that he failed to do because of the attendant expense. *This information preceded the date of this suit by more than five years and a half.* The only possible excuse for the delay is the character and value of the premises in controversy, and that is in law no excuse whatever. He afterwards fixes the date of his visit to Thomson's office and the receipt of this information from Thomson as May, 1881 (fol. 350).

The date of the J. C. Johnston patent is given as February 21, 1884. A record of it was of course made in the United States land office, at Leadville, when received. Its issue presupposes an entry of the mine some time before then. Application for the patent was made in February, 1881. Ninety days from that date, the applicants were entitled to a receiver's receipt, if no adverse suits intervened. It is not the date of the patent, but of the entry which determines the title. It has been held by this Court many times that the patent is merely evidence of the title, and that the receiver's receipt constitutes the fee title which the Government bestows upon the citizens.

Stark vs. Starrs, 6 Wall., 402.
Lessieur vs. Price, 12 How., U. S., 59.
Gibson vs. Chouteau, 13 Wall., 92.
Shepley vs. Cowan, 91 U. S., 330.

Pacific M. & M. Co. vs. Spargo, 16 Fed., 348.

Cornelius vs. Kessel, 128 U. S., 456.

Deffeback vs. Hawke, 115 U. S., 392.

The written contract says nothing about a patent or a certificate of entry. The appellant does not pretend to give the Court the date of the latter. We know that on April 25, 1882, when the proposition of settlement was accepted, the J. C. Johnston claim was ready for entry, and that the time for all others to object had passed. Hence the appellant's right of action upon the theory that Chatfield was bound to secure title from the Government began at that time and he cannot claim that, because he actually knew of the issuance of the patent in 1885 and not before, the statute did not begin to run until then. A visit to the land office, a note to one of its officers, an inquiry of the surveyor general at Denver would have sufficed. He preferred to let things take their own course, and as he did not even inquire of Thomson in 1881 in what Court the compromised action had been brought, nor what the terms of settlement were, nor why he was not consulted, so he waited until information of the issuance of the patent was thrust upon him.

It is evident that a man who would decline to copy a few contracts because of the attendant expense, would decline to bring an action like this at a time when the value of the property was doubtful. He cared so little about it then that he shrank from the payment of a dollar or two to some one for a little writing. My belief is that his examination of the agreement convinced him that he had no

cause of action under the circumstances, that the property was worthless in any event, so he resigned himself to the situation and left for the more inviting prospect offered by the "Wood River Country."

4. THE COMPLAINANT, IF HIS ACTION IS FOUNDED UPON FRAUD, IS BARRED BY THE STATUTE OF LIMITATIONS OF THE STATE, BECAUSE HIS BILL FOR RELIEF WAS NOT FILED WITHIN THREE YEARS AFTER HIS DISCOVERY OF THE FACTS CONSTITUTING SUCH FRAUD.

Section 2911 Mills' Annotated Statutes of Colorado reads as follows: "Bills for relief on the ground of fraud, shall be filed within three years after the discovery by the aggrieved party of the facts constituting such fraud, and not afterwards."

If the bill be for relief on the ground of fraud, it is easy to demonstrate that the complainant waited just seven years after the first act of fraud alleged to have been committed by Chatfield, and more than five years after the commission of the other acts of fraud by the several persons implicated with him. The frauds charged in the bill are that Chatfield entered into a contract with Thomson and Sayer concerning their contingent eighth interest in the mine, which had been disregarded and which the latter would not let complainant examine. Also, that he left his contract with Chatfield in the custody of Thomson and Sayer, who promised to have it recorded, but who failed to do so. Also, that on December 14, 1880, Chatfield conveyed the J. C. Johnston mine to the Fulton Mining Company, which then had no legal existence, and which, therefore, took no title, either

legal or equitable. It is significant that complainant is silent as to when he learned this fact, and which, it is presumable, was known to him at the time of its occurrence, and, therefore, long prior to his demand for a deed from Chatfield. Also, that the suits brought in adverse and the bills filed in equity in the Federal Court, in May, 1881, were brought by the agency of Thomson and Sayer, and were collusive, they simply pretending to have earned their one-eighth interest in the mine by defending against them.

A number of frauds are mentioned in his testimony, but the principal one to which he deposes is the false information given him from time to time by Chatfield; and upon which he was foolish enough to rely. He never thought, however, to ask Chatfield when his testimony would be needed, nor why it was that he, an indispensable witness, had never, through the years of concealment and deception, been consulted either in the preparation of pleadings or defenses. He must have been called upon as an original locator of the mine for an affidavit of citizenship at some stage in the patent proceedings anterior to the entry, but his confidence and childlike faith in Chatfield's probity was then so great that doubtless he swore to whatever Chatfield suggested.

If appellant's version of the contract be correct, Chatfield violated it and committed a consequent fraud upon appellant, when, on October 15, 1880, he executed a deed to Thomson and Sayer for an eighth of the J. C. Johnston mine. Johnston does not deny that he knew this at the time. Thomson and Sayer, in their turn, committed another fraud

and betrayal of trust on the same day, when they conveyed the Smuggler 2 to W. J. Wilson. That deed was recorded November 6, 1880, and appellant was bound to take notice of it on December 14, 1880. Chatfield committed another fraud on the appellant by conveying the J. C. Johnston mine to the Fulton Company, whether the latter was properly incorporated or not. He was guilty of another, although not under this contract, yet to the detriment of the appellant, when he refused to do the assessment on the Kansas City mine, and relocated it for himself as the Chatfield. Meanwhile Thomson and Sayer had been guilty of a second fraud on their own account, because they neglected to have the Johnston-Chatfield contract recorded as they had promised, and this the appellant knew in 1881, not later than May, *for when he asked for the papers and received and examined them, he could not avoid observing that it had not been recorded.* These several matters, each of which was enough to excite suspicion, and nearly every one of which was in itself sufficient to warrant the filing of a bill, did not even put him upon inquiry.

But if appellant claims that the basis of his action be the fraud committed in bringing and settling sham suits and keeping him in ignorance of the condition of affairs until the patent was secured in February, 1884, then he should have instituted his action within three years after that time; for, I contend, that it is impossible for any man to secure a patent from the government and conceal the fact for a single day from any one disposed to ascertain it.

It follows, then, that with fraud as the basis of

the appellant's bill, from whatever standpoint he may occupy, the fraud is such as to have made it his duty to institute his action within three years after its discovery or after it could, by the exercise of reasonable diligence, have been discovered. A bill for relief, on the ground of fraud, must be filed within three years after the discovery thereof, and the bill must allege when the fraud was discovered, and that it was within three years of the filing thereof. It must also show how the discovery was made, and state the facts connected therewith.

Pipe vs. Smith, 5 Colo., 146.
Bradbury vs. Davis, 5 Colo., 265.
Martin vs. Smith, 1 Dill., 97.
Carr vs. Hilton, 1 Curtis, 390.
Fisher vs. Boody, 1 Curtis, 206.
Moore vs Greene, 19 How. U. S., 69.
Mayne vs. Griswold, 3 Sanf., 463.
Field vs. Wilson, 6 B. Mon., 479.
Smith vs. Talbot, 18 Tex., 774.
Campbell vs. Vining, 23 Ill., 525.
Ferris vs. Henderson, 12 Pa. St., 49.
Edmonds vs. Goodwin, 28 Ga., 38.
Farnam vs. Brooks, 9 Pick., 212.
Way vs. Cutting, 20 N. H., 187.
Stearns vs. Paige, 7 How., U. S., 819.
Edwards vs. M'Gee, 31 Miss., 143.
Angell on Limitations, Secs. 183, 190.

"Under our statute, bills for relief on the ground of fraud must be filed within three years after the discovery by the aggrieved party of the facts constituting such fraud, and not afterwards. We cannot, however, give this statute such a construction as will permit a party in all cases to stand

idly by until the limitation of the statute has nearly run, and then claim that by virtue of the statute, he is excused from all laches."

Great West Co. vs. Woodmas Co., 14 Col., 98.

5. THE COMPLAINANT, IF HIS ACTIONS BE FOR THE ENFORCEMENT OF A TRUST, IS BARRED BY THE STATUTE OF LIMITATIONS OF THE STATE, BECAUSE HIS BILL WAS NOT FILED WITHIN FIVE YEARS AFTER THE CAUSE THEREOF ACCRUED.

It will be observed that the first section of the Colorado Statute of limitations which I have quoted, applies generally to all bills in equity "not otherwise provided for," and refers specifically to those filed for the declaration and enforcement of trusts. The only remaining section of the law which relates to bills in chancery, is 2909 Mills Annotated Statutes, and it reads as follows:

"Whenever there is a concurrent jurisdiction in the Courts of common law, and in Courts of equity of any cause of action, the provisions of this chapter limiting the time for the commencement of a suit for such cause of action in a Court of common law, shall apply to all suits hereafter to be brought for the same cause in a Court of chancery."

Upon the theory that the bill is filed to protect and enforce a right purely *ex-contractu*, an action might have been brought at law for damages for its breach. In that view there might be a concurrent law and equity jurisdiction, but, as we have shown, the action, if for specific performance, was brought more than six years after it accrued. If

it be to declare and enforce a trust it is the first and not the last section that must govern, and the bill should have been filed within five years after the occurrence of the right to do so. The gist of the action is certainly the wrongful disposition or transfer of the legal title to the property in controversy, and its enjoyment by some of the defendants through the misconduct of the others. The equitable title, therefore, which the complainant asserts to be his, but, under such conditions as call for the application of equitable principles only, necessarily draws to it the legal title which is asserted to be in the defendant. The suit therefore is within the *exclusive* jurisdiction of a Court of equity, and must be limited, controlled and governed by the section of the State statute concerning trusts as well as by the rules and principles peculiar to equity jurisprudence.

Clark vs. Boorman's Executors, 18 Wall., 505.

1 Pomeroy Eq. Jur., 222; and see Sections 138, 141, 146, 181, 218–20, 232 and cases cited.

And, in this connection, it is perhaps proper to note that "the modern forms of these statutes, in the American States, generally declare in express terms that the periods of limitation shall apply to all equitable suits as well as to legal actions." While this does not abrogate or annul the general doctrine of laches in equity, yet the provisions of the written law of the State will be applied to all cases falling within the scope of the statutory limitation.

1 Pom. Eq. Jur., 419.

Holland vs. Challen, 110 U. S., 15.

Manifold reasons for assuming the action to be brought for the enforcement of a trust are furnished by the record, to say nothing of the opinion of the trial Judge or of the arguments of appellant's counsel. The bill alleges that Chatfield, Thomson and Sayer represented to complainant that the title should be vested in one person to facilitate the acquisition of a patent, and also that for its better management a company should be incorporated, to which a conveyance of the mine should be made (fol. 8). Also, that if complainant would convey his remaining fourth interest to Chatfield, Thomson and Sayer would defend the J. C. Johnston title against that of the Smuggler 2, while Chatfield would procure a patent and then reconvey to him an undivided eighth of the mine, free of expense, and hold the remaining eighth for Thomson and Sayer, but if their services should not become necessary, or should not be performed, they should receive nothing, and the remaining eighth should be reconveyed to the complainant (fol. 9). That his deed was drawn at the solicitation of these men and because he had confidence in them. That another contract was at the same time executed between Chatfield and Thomson and Sayer, declaring the trust upon which the former held the eighth interest for the latter, which agreement, however, the complainant (though directly concerned therein) never read (fol. 10). That on December 14, 1880, Chatfield made a conveyance of the mine to the Fulton Company, which then had no legal existence, but

when it was made each and all of its incorporators had "full knowledge and actual notice of *the uses, trusts and conditions* upon which Chatfield held the J. C. Johnston title" (fol. 11). That he had implicit confidence in Chatfield, and was repeatedly deceived by the latter when he made inquiry as to the condition of the title. That the defendants, Anderson and the Standard Mining Company, took their title to the premises with full knowledge of *the uses, trusts and conditions* upon which Chatfield took the title (fol. 14).

At folio 5 the complainant begins a statement of his grievances against the defendants by alleging "that plaintiff's interest in said mining claim at the time of the execution of said deed was an undivided one-half, and that said conveyance was in pursuance of said title bond as to the one-fourth interest thereby bonded as aforesaid, and as to the remaining one-fourth interest said conveyance *was in trust for certain uses and trusts* and under circumstances as follows," etc.

Throughout his testimony the complainant seeks to establish a breach of trust by the defendants Chatfield, Thomson and Sayer, with the knowledge and assent of all the other defendants, who were either accessories before the fact, or guilty as principals at the time of their occurrence. His confidence was betrayed and his property sacrificed by a deliberate disregard of solemn covenants, and the practice of continued and unpardonable deceit. The bill filed by him in 1885, and verified before John Hipp, a notary public, elaborates the terms and character of the trust and the manner of its breach in almost

endless reiteration. But the action is barred by the statute; and the trust, on the assumption that complainant tells the truth—and he, of course, can not dispute its truth—is no longer enforcible.

I have already enumerated the several acts of the defendants which constitute their breach of contract or their commission of fraud against the appellants. They constitute the breach of trust as well, if any trust has been betrayed. Chatfield's conveyance to Thomson and Sayer of the eighth interest, which they were to earn before obtaining it, their conveyance of the Smuggler 2 to Wilson, Chatfield's conveyance of the mine to the Fulton Company, his failure to institute an action against the Smuggler 2 claimants, and the impossibility of his so doing after he parted with the title, the neglect of Thomson and Sayer to record the Johnston-Chatfield contract, the notification of Johnston by Thomson, in May, 1881, of the compromise of the litigation pending, and its actual and unconcealed adjustment, in April, 1882, followed by a tacit repudiation of any claim appellant might then have had, made it incumbent on the latter to act promptly. His cause of action accrued on October 15, 1880; it cannot have accrued later than April, 1882. He relied upon Chatfield's representations at his peril. Many sources of information were at his command, but they were all ignored. The suits which he instituted, respectively, in 1885 and 1886 cannot avail him. Each was neglected and dismissed. This one must stand or fall upon its own merits, and in all respects as though no others had ever been instituted; for if the statute could be defeated by the fact that be-

fore its operation became complete some other suit had been brought and dismissed, it would in many cases be deprived of all vitality.

Wood Limitations, Sec. 6, and cases cited.

And see—

Hogan vs. Kurtz, 94 U. S., 773.

The contract creating the trust, and alleged in the complaint, contains no authority to convey the premises therein described to any one save the complainant, and to him only under certain circumstances. Yet two conveyances were made within sixty-five days after the contract was executed, of which he must be charged with notice. Each was in defiance of the trust and a fraud on complainant's rights. One of them was at once recorded, and the grantee went into possession thereunder. This the appellant also knew, for he was in Aspen in 1881, and was in the employ of Chatfield as well. He knew the company was expending its money in the development of the premises.

From the time that Chatfield conveyed the premises to the Fulton Company, and surrendered possession thereof, he ceased to occupy the relation of trustee as to that property. Whatever his relations to it as an officer of the company may have been he had severed all connection with it as the holder of the legal title in trust for another. This act of his invested the *cestui que trust* with the immediate right to proceed against him and his grantee with notice, and the statute began to run when the right accrued. "It may be conceded that so long as a trustee continues to exercise his powers as trustee in regard to property, he can be called to an account in regard to that trust. But when he has

parted with all control over the property, and has closed up his relation to the trust, and no longer claims or exercises any authority under the trust, the principles which lie at the foundation of all statutes of limitation assert themselves in his favor, and time begins to cover his past transactions with her mantle of repose."

Clarke vs. Boorman's Ex'rs, 18 Wall, 509.
Manning vs. San Jacinto Co., 7 Sawyer C. C., 418.
Dannmeyer vs. Coleman, 8 Sawyer C. C. 51.

So that the claim that the wrongs complained of or some of them grew out of or resulted from the severed relation of trustee and *cestui que trust*, neither lessens nor excuses the appellant's delay. He is, therefore, chargeable with a knowledge of the breach of trust when the conveyance was made to the Fulton Company on December 14, 1880, seven years and ten months prior to the filing of this bill, and thirty-four months longer than the General Assembly of the State of Colorado deemed wise to permit any person to bring an action to enforce a trust. This is conclusive of the appellant's case. The contract creating the trust was entire. A breach of any portion of it was a breach of the whole. The cause of action, therefore, became complete with the conveyance of December 14, 1880.

The discussion up to this point has proceeded upon a consideration of the evidence of and for the appellant. It is proper just here, upon the assumption that appellant will fix the time when he claims to have learned of the issuance of the patent as the date of the occurrence of his cause of

action, to quote from the deposition of Chatfield. It will be noticed that if Johnston was informed by Thomson, in May, 1881, that the suit had been compromised, upon which he was alert to have his papers copied, it is almost certain that when he saw Chatfield, he had the conversation which the latter relates.

"Q. What demands, if any, did Mr. Johnston ever make upon you for his interest in the property? A. I think in 1882, in Littleton, he spoke to me and said he thought he ought to be entitled to his interest in the property; that we should have gone on and contested that case.

"Q. What did you say to him? A. If I recollect right, I told him we found we had no shadow of a ghost to maintain his case, and it was divided up among the stockholders; in other words, among the claimants Dunscombe, Seaver, Atchison and Holden." (Fol. 137.)

While testifying upon another subject, Johnston inadvertently discloses the fact that Chatfield was present when, in May, 1881, he applied to Thomson at Leadville and was told of the compromise. In speaking of the Kansas City Mine, and on cross-examination by Mr. Thomson, who tried the case in the Circuit Court, he says:

"Chatfield was to put up so much money to do the assessment work on the property. I went over in the spring of 1881, and stopped in your office on my way over. *When there, Chatfield said* that he did not have the money to do the assessment work," etc. (Fol. 434.)

This being so, it was the most natural occurrence that afterwards he should have expressed

regret that the compromise was made, and, quite natural too, that he, the most important and indispensable of witnesses, to maintain the J. C. Johnston title, should have gone away to a distant Territory, without reference to the character or condition of the controversy. It is also to be noted that he expressed no dissent when informed by Thomson of the compromise. That was reserved for a later period when the mine was looking better. He visited it at about the time of his conversations with Thomson in 1881, when it was probably not very promising, for he said to Sayer during the progress of the suit that he then did not think it worth a d——n (fol. 154). He told Chatfield, virtually, the same thing in 1882 (fol. 147).

6. THE APPELLANT INDEPENDENT OF STATUTORY LIMITATIONS HAS LOST BY HIS LACHES ANY RIGHT WHICH HE MAY HAVE HAD TO INVOKE THE JURISDICTION AND POWERS OF A COURT OF EQUITY.

While following the analogies of the law, and recognizing the operation of statutes of repose when expressly made applicable to causes in chancery, these courts, nevertheless, look with disfavor on unexplained lapses of time between the occurrence of a cause of action and the institution of a suit upon it, although for a period short of statutory provision. If there has been a change in the condition of the property or the situation of the parties in the interim, the complainant must suffer the consequences; and this irrespective of the length of delay. For a few months in one case may mean more than a few years in another, and each must be governed by its own environment.

Was this suit, regardless of the statute, commenced in apt time, considering the knowledge of the appellant, the condition of his adversaries, the speculative character and rapidly changing value of the property involved?

If the price at which appellant held a quarter interest in the mine, in October, 1880, be a fair criterion of its value then, it was worth $4,800; and the eighth which Chatfield was to reconvey to the appellant was worth ~~$800~~ 600. If the value fixed by the bill of complaint filed October 15, 1887, be correct, the mine was worth $1,000,000, and the eighth $125,000, exclusive of the proportion of accumulated profit to which it was entitled. The Master's report shows that a large amount of silver and lead ores had been extracted from it, and that a very considerable consequent profit had been realized during the period between the contract and the action. Its value had been acquired by the expenditure of the appellee's money, and through the risk, the energy and the courage it displayed in pushing the work of development and taking the chances of success and failure. The appellant spent neither time nor money. He took neither risk nor chance. He displayed neither confidence in the outcome nor interest in the present prospect. But, with the gathering of the harvest and the certainty of continued reward, he begins to stir himself, and demands his interest in the mine. "The certainty of a sure thing" is too much for him, and so he employs counsel, and, with his quiver full of charges of fraud and oppression, he files his bill. I assert that the books contain no case in which

laches were more apparent, lack of equity in the complainant more complete.

Not later than May, 1881, he knew the trust had been violated, the contingent interest to himself destroyed, the property conveyed to others and held adversely to himself, and he was silent. Without protest, he stood by for over seven years, and saw a mine which he then thought "wasn't worth a d——n," a prospect so baseless and unsubstantial as to be incapable of becoming property to the extent that his partners who, with himself, created it, could not have or hold an interest exempt from his subsequent appropriation thereof at pleasure, and saw it grow, under extensive and expensive development, by those who believed themselves to be its owners, into a great mine. If he speaks the truth in his bill, he owned, and could at any time have recovered, a fourth of the property by law. He could have warned the unsuspecting claimants of his title, assumed the hazard of its development, which they as innocent holders had assumed, and were making, or he could, at his peril, await in silence the result of such expenditure. He chose the latter course, and remained silent, when conscience required him to speak. He should not be permitted to speak, now that conscience requires him to be dumb, and since he has slept so long and so soundly upon his supposed rights, he must sleep on, and sleep forever.

Smith vs. Clay, 3 Brown, Ch. 638.

No time can be arbitrarily fixed for the application of the rule, and each case must stand upon its own merits; but it may be stated as a general principle that one who waits and watches, or waits

without watching, until property to which he has some claim, real or imaginary, is enhanced in value by the efforts and expenditures of those in possession and claiming to be its owners, and thereupon brings legal proceedings for the enforcement of his asserted right thereto, it is too late for him to obtain relief, although he may at some time have been entitled thereto. "A party will not be permitted to delay to enable him to speculate on the chances of an appreciation in value of the property, and elect to proceed only where it would be profitable to do so."

Bush vs. Sherman, 80 Ill., 175.
Dempster vs. West, 69 Ill., 613.
Wichell vs. Edwards, 57 Ill., 41.
2 Jones on Mortgages, Sec. 1865.
Munn vs. Burgess, 70 Ill., 604.
Nichols vs. Baxter, 5 R. I., 491.
Dryden vs. Stephens, 19 W. Va., 1.

And the English doctrine is similar. When property is of a speculative or precarious character, he who complains of fraud must put forward his complaint at the earliest possible moment.

Jennings vs. Broughton, 5 De G. M. & G., 126.
Walford vs. Adie, 5 Hare, 112.

The general doctrine is that a person will not be permitted to remain passive, prepared to affirm the transaction if it should be advantageous to him, or repudiate it if unprofitable.

Pratt vs. California Mining Co., 9 Sawyer, C. C. 364; same case, 24 Federal, 869.
Kinne vs. Con. Va. Co., 4 Sawyer, 383.
Badger vs. Badger, 2 Wallace, 87.

Sullivan vs. R. R. Co., 94 U. S., 806.
Bank vs. Carpenter, 101 U. S., 567.
Wollensak vs. Reiher, 115 U. S. 96.
Lansdale vs. Smith, 106 U. S. 391.
Powell vs. Clayton, 1 K. & J., 480.
Prendergast vs. Turton, 1 Younge C. Ch., 98.
Pipe vs. Smith, 5 Col., 159.
Lakin vs. Sierra Buttes Co., 25 Federal, 337.
Gordon vs. Kimmell, 99 U. S., 201.
Preston vs. Preston, 95 U. S., 203.
Hall vs. Russell, 3 Sawyer, 515.
Hancock vs. Harper, 86 Ill., 445.
Spaulding vs. Farwell, 17 Maine.
Lawrence vs. Rokes, 61 Maine, 38.
Mobley vs. Cureton, 2 S. Carolina, 140.
Hayward vs. Bank, 96 U. S., 614.
Galliher vs. Cadwell, 145 U. S., 368.
Bank vs. Judah, 8 Conn., 145.

In the case of Pratt vs. the California Mining Company, cited above, it is declared that, "Diligence is a relative term, and the law justly charges all persons claiming rights or interests in property of a speculative or fluctuating value with a far higher diligence in the assertion of those rights than where the property involved is of a value fixed, permanent, and little changing. The changes in values occurring in a mining town or locality in five or ten years are often far greater than those which occur in an agricultural community in half a century."

In the leading case of Twin Lick Oil Co. vs. Marbury, 91 U. S., 587, a case involving the title to

an oil well whose value had greatly increased between the time the complainant's alleged cause of action arose, and the institution of the suit for its enforcement, Mr. Justice Miller, speaking of the application of this rule to property of a speculative nature, said:

"The fluctuating character and value of this class of property is remarkably illustrated in the history of the production of mineral oil from wells. Property worth thousands to-day is worth nothing to-morrow; and that which would to-day sell for a thousand dollars as its fair value, may, by the natural changes of a week or the energy and courage of desperate enterprise, in the same time be made to yield that much daily. The injustice, therefore, is obvious, of permitting one holding the right to assert ownership in such property, to voluntarily await the event, and then decide, when the danger which is over and has been at the risk of another, to come in and share the profit.

"While a much longer time might be allowed to assert this right in regard to real estate whose value is fixed, on which no outlay is made for improvement, and but little change in value, the class of property here considered subject to the most rapid, frequent and violent fluctuations in value of anything known as property, requires prompt action in all who hold an option, whether they will share its risks, or stand clear of them.

"We think, both on authority and principle—a principle necessary to protect those who invest their capital and their labor in enterprises useful but hazardous—that we should hold that plaintiff has delayed too long."

See, also—

Bliss vs. Edmonson, 8 De. G. M. & G., 787.
Marsh vs. Whitmore, 21 Wallace, 183.
Harwood vs. R. R. Co., 17 Wallace, 81.
Vigars vs. Pike, 8 Cl. and Fin., 650.
Wentworth vs. Lloyd, 32 Beavan, 467.
Ford vs. Williams, 24 N. Y., 359.
2 Perry on Trusts, 870.
Gregg vs. Von Phul, 1 Wallace, 274.
Graham vs. R. R. Co., 2 Mac. & Gor., 146.
Kent vs. Jackson, 14 Beav., 384.

One of the chief reasons, if not the controlling one, why this rule is so constantly enforced, is that the defendant is generally presumed to have been induced to expend money and assume risks attendant upon development as a consequence of the plaintiff's delay, and he cannot, therefore, be placed *in statu quo* should plaintiff prevail; hence the length of time which must elapse before the rule can be invoked cannot be arbitrary. The rule is, therefore, flexible, and accommodates itself to the circumstances of each particular case. Thus, one and one-half years has been held to constitute laches and bar the suit.

Hammond vs. Wallace, Cal., 24, Pacific 837.
Whittaker vs. South Western Imp. Co., 12, South Eastern, 50; same case, 34 West Virginia, 217.

A delay of seventeen months was held fatal in Burke vs. Levy, 70 Cal., 250.

An unexplained delay in bringing a suit to set aside a deed alleged to have been obtained by duress, during which time the property has passed

into the hands of innocent purchasers, bars the right to sue.

Eberstein vs. Willetts, Ill., 24, North Eastern, 967.

Klein vs. Vogel, Mo., 1, South Western, 733.

Howle vs. Land Company, Ala., 11, Southern, 15.

Richardson vs. Walton, 49 Federal, 888.

Champion vs. Morris, Cal., 21, Pacific, 534.

A creditor induced *by fraud of debtor* to defer bringing suit until his claim is barred by the statute does not give a Court of Chancery jurisdiction of the cause of action.

Jaffrey vs. Bear, 42 Fed., 569.

See—

Gallaher vs. Cadwell, 145 U. S., 368.

The Federal Courts, sitting in equity, will decline to relieve when complainant is guilty of laches, though the statute may not have operated.

Van Vleet vs. Sledge, 45 Fed., 743.

And see—

Herbert vs. Herbert, 47 N. J. E., 11.

A case very similar to the one at bar, so far as it relates to a change of value in the property, and which was barred by a delay of two years, is peculiarly in point, because the decision was made by the Supreme Court of the State in which this action arose.

Great West Mining Co. vs. Woodmas Mining Co., 14 Colo., 90.

In this case it is held that the statute of limitations fixes a limit beyond which the courts cannot extend the time, but within this limit the peculiar

doctrine of Courts of Equity will prevail. It is an able opinion, and was secured largely through the labors and ability of the gentleman who, in behalf of the appellant, will seek to distinguish this cause from those to which the principle of that case is applicable.

Appellant will not be permitted to plead ignorance of the actions of defendants, or some of them, and assert that he began proceedings in ample time after knowledge of them was brought to him. The conveyances were recorded and information given to him years ago. His counsel claim a mistake in date, but they cannot claim exemption from the effect of recorded instruments. The presumption is that if a party affected by any fraudulent transaction or management might, with ordinary care and attention, have seasonably detected it, he seasonably had actual knowledge of it.

Pipe vs. Smith, 5 Colo., 159.
Farnham vs. Brooks, 9 Pick., 212.
Angell on Limitations, Sec. 187.
Wade on Notice, Sec. 11.

Means of knowledge are equivalent to actual knowledge.

Dannmeyer vs. Coleman, 8 Sawyer, 58.
Wood vs. Carpenter, 101 U. S., 141.
McKowan vs. Whitmore, 31 Maine, 448.
Bucknor vs. Calcote, 28 Miss., 432.
Rouse vs. Southard, 39 Maine. 404.
Nudd vs. Hamlin, 8 Allen, 130.
Kennedy vs. Greene, 3 Myl. & K., 722.

The Fulton Mining Company was incorporated December 11, 1880. The mine was conveyed to it on the 14th and the deed was promptly recorded

(see paragraph 9 of complainant's bill of September, 1885). In the same bill appellant swore that the company went into immediate and exclusive possession of the property; he agreed to it and directed that the company should be incorporated, if the bill of 1885 and his subsequent testimony are correct. He presumptively knew everything which appeared of record, and that certainly was sufficient to put him upon inquiry, which, if seasonably made, would not have required the passage of more than seven years before the discovery of the alleged fraud could have been made.

"Parties cannot disregard known facts that lead to frauds affecting their rights and then claim exemption from the laws that control human affairs and set up a right to open the transactions of the past. The world must move on, and those who claim an interest in persons or things must be charged with a knowledge of their status and condition and all the vicissitudes to which they are subject."

As to notice by public records, see—

Manning vs. San Jacinto Co., 7 Sawyer, 418.

Lest it might be contended that both the statutes and the laches, or one or the other of them, must be interposed by way of answer, or other pleading, in order to be made available to the appellee, I beg leave to refer to some authorities which establish the doctrine that such pleading is unnecessary, but when delay exists, as here, it constitutes a rule of decision which must be applied.

Harwood vs. R. R. Co., 17 Wall., 44.

Pratt vs. Mining Co., 9 Sawyer, 364.

Badger vs. Badger, 2 Wal., 87.

Sullivan vs. R. R. Co., 94 U. S., 811.
Harris vs. Hillegas, 66 Cal., 79.
Riley vs. Mormon, 39 Ark., 158.
Clark vs. Boorman's Executors, 18 Wal., 505.
2 Story's Equity, Sec. 1520 *a*.
Wilson vs. Anthony, 19 Barb. (Ark.), 16.
Taylor vs. Adams, 16 Barb. (Ark.), 62.
Johnson vs. Johnson, 5 Ala., 90.

If the case as it appears at the hearing is liable to objection, by reason of the laches of the complainant, the Court will upon that ground be passive and refuse relief.

Sullivan vs. R. R. Co., *supra*.
Olcott vs. Bynum, 17 Wall., 44.
Badger vs. Badger, 2 Wall., 87.
Marsh vs. Whitman, 21 Wall., 178.
Bliss vs. Edmondson, 8 De G. M. & G., 787.
Cholmondeley vs. Clinton, 2 Jac. & W. 141.

In Pipe vs. Smith cited, *supra*, it is declared that bills for relief, upon the grouud of fraud, must allege when such fraud was discovered and show that it was within the statutory period cited, how it was discovered and the facts connected with it, or a demurrer will lie. The plaintiff must bring himself under the statute and the defendant is not compelled to plead it in his behalf.

In Upton vs. McLaughlin, 105 U. S., 640, one of the questions discussed is, whether the failure to bring suit within the time limited, deprives the Court of jurisdiction. It is there held that the question cannot be raised *for the first time* in the Court of Review. It is legitimate to infer that the ques-

tion may be raised and the defense relied on in the Court below, although not pleaded.

Coffin vs. Reynolds, 37 N. Y., 640.

Zane vs. Zane. 5 Kansas, 134.

In Retzer vs. Wood, 109 U. S., 185, where the plea was the general issue, Mr. Justice Blatchford in the opinion says :

" It is well settled that in the absence of a contrary rule established by statute, a defendant who desires to avail himself of the statute of limitations as a defense, must raise the question either in pleading or on the trial, or before judgment."

See Ruggles vs. Fon du Lac County, 63 Wisconsin, 205.

Bogardus vs. Trinity Church, 4 Paige Ch., 178.

Mead vs. Gilfoyle, 64 Wisconsin, 18.

In a note to Sec. 847, Story vs. Equity Pleadings, it is said :

" By the English practice, where the defendants had by affidavit raised the question of lapse of time and acquiescence as a bar to a suit against them, but had not answered or pleaded to the bill, they were allowed to plead the statute of limitations *ore tenus* at the bar." Green vs. Snead, 30 Beav., 231.

Counsel for appellant will refer the Courts to a number of Illinois decisions which seem to support the view that laches and limitations should be pleaded in order to be availed of, but they are certainly opposed to the general rule, and wholly out of line with all the Federal authorities upon the subject.

I am satisfied that the question of laches or

limitations may be raised at any time prior to judgment or decree in the Court below. The importance of the principle in the present case, however, is modified if not extinguished by the stipulation of November 12, 1888 (printed record, p. 394), which provides that "either party may amend their pleading to correspond with proofs taken or to be taken, and that the stipulations of fact made therein, and that said pleadings shall be deemed and taken as amended accordingly for the purpose of hearing and decree." That this stipulation is practically self-executing, see Coles vs. Commissioners, 27 Pac., 619.

The bills filed by the complainant prior to the filing of this one does not relieve him of the consequences of delay in filing this. The first was in September, 1885, in a Court which had no jurisdiction, and which he allowed to linger without pressing it to issue for nearly a year, when it was dismissed, but for what reason the record does not disclose. Both were brought after the value of the mine had been ascertained by the labor and expenditures of its owners in possession, and the defense of laches was as applicable to them as it is to this one. It is fatal to them all.

The mere institution of a suit cannot relieve a person from the effect of laches. He must be diligent not only in bringing but in prosecuting his action. If he delays unreasonably in the latter duty, the consequences are the same as though the bill had not been filed.

Hawes vs. Orr, 10 Bush (Ky.), 437.
Ehrman vs. Kendrick, 1 Met., 149.
Watson vs. Wilson, 2 Dana, 406.

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Hawes vs. Orr, 10 Bush (Ky.), 437.
Ehrman vs. Kendrick, 1 Met., 149.
Watson vs. Wilson, 2 Dana, 406.

Clarkson vs. Morgan, 6 B. Mon., 447.
Ferrier vs. Busick, 6 Iowa, 258.
Bybee vs, Summers, 4 Ore., 361.
Mann vs. Roberts, 11 Lea (Tenn), 57.

There is another feature of the appellant's laches which deserves some consideration. On July 29, 1885, there were outstanding 110,100 shares of the Fulton Mining Company's stock. This was two months prior to the filing of the first bill. It was divided in the following proportions:

J. S. Chick, Kansas City	25,805
H. M. Holden, of Kansas City, for himself and others	41,970
E. F. Browne	30
Selby Jones	376
Margaret Dunscombe	5,562
E. Dunscombe, Jr.	98
J. E. Seaver	18
Total	73,859
I. W. Chatfield	425
Elmer E. Chatfield	3,625
W. J. Wilson	16,587
C. I. Thomson	4,416
Olivia Thomson	7,226
Daniel Sayre	399
Augusta Sayre	3,743
Total	36,241

The 73,859 shares, above itemized, were held by *bona fide* purchasers for value; none of them were identified with the Johnston title back of the incorporation of the Fulton Company, with the ex-

ception of Dunscombe, who had long before the filing of the bill, parted with all interest in the company; none of them were connected with the formation of that company, and were absolutely ignorant of the Johnston-Chatfield contract. The bulk of their stock was received as a consideration for their interests in the Smuggler 2 claim; the rest was purchased and paid for. Mr. J. S. Chick, the holder of more than 25,000 shares, was an owner in neither location, but purchased his stock, as the record shows, long subsequent to the formation of the Fulton Company. The remaining 36,241 shares were owned by those who had some knowledge of Chatfield's relation with Johnston. This condition of things requires that the strictest scrutiny should be made of the appellant's conduct to ascertain whether he has used such diligence as justifies his demand for the relief which he craves before he shall be permitted to take from these *bona fide* owners a large proportion of their stock upon the pretense that they had constructive notice through the promoters of the Fulton Company, of his claim.

See—

Burt vs. Batavia Paper Co., 86 Ill., 66.
Iowa Co. vs. American Co., 32 Fed. R., 735.

7. THE APPELLEE, AS WELL AS ITS GRANTORS, ANDERSON AND THE FULTON MINING COMPANY, OCCUPIES THE POSITION OF A BONA FIDE PURCHASER FOR VALUE.

I am aware that the stipulation to which I have referred recites that the appellant has sufficiently proven notice to the appellee of the trust and con-

ditions, if any, on which Chatfield took the complainant's deed on the 12th of October, 1880, and that the Standard Company waives the denials of notice in that behalf, as alleged in his answer; but the stipulation also recites that there is no waiver or withdrawal of the denial that *there was any such trust or condition as alleged in the complaint*. It is difficult to conceive what can be intended by this clause of the stipulation. The appellee certainly cannot take notice of what it is expressly declared had no existence; and since there is a denial of any trust or condition whatever, it is nonsense to say that the appellee had notice thereof. Whether the parties who prepared the stipulation intentionally inserted this *non sequitur*, I cannot say; for the purpose of the case it is immaterial. It has, and can have, no legitimate meaning. It was made a prominent feature of the rehearing, and does not, I think, need any further reference.

To determine whether The Fulton Mining Company was a *bona fide* purchaser of the J. C. Johnston claim, involves two propositions: First, whether an issue of its stock is equivalent to a payment in cash for the property, so far its *bona fides* is concerned; and, second, whether notice to those who were afterwards its directors, but before the conveyance to the company, and while they were acting for themselves, and not for the company, in the sale and conveyance of the property to it, charges the company with knowledge of such notice so acquired. As to the consideration of the property, it may be said that both the Constitution and laws of the State of Colorado authorize incorporated companies to issue stock in consideration

of money paid, services performed, or property acquired.

Constitution of Colorado, Art. 15, Sec. 9.
General Statutes 1883, Sec. 340.

The issue of stock by a private corporation for the purchase of property conveyed to it, constitute as good and complete a payment as if made in cash.

Morawetz on Corporations, Sec. 374, 590.
Stacy vs. Little Rock R. R. Co., 5 Dillon, 376.
Phelan vs. Hazard, same report, 45.

As to the other proposition, it may be said that notice of an equity to one who afterwards becomes the agent of a person sought to be affected by such equity, derived from a transaction with which such person had no connection or interest, and in which the one receiving such notice was acting for himself and not for his subsequent principal, their interests being then adverse, does not in any manner affect the principal with notice of such equity. The authorities on this proposition are unanimous.

In the case of the Iron Wheel Co. vs. Davis Wheel Co., 20 Fed. Rep., 700, the Court says: "Actual notice of this equity is not shown, but the defendant contends that the complainant is chargeable with constructive notice. The defendant was incorporated after the execution of the agreement between the Davises and the Davis Iron Wheel Co., and the Davises were two of the five incorporators; they were also two of its five directors, and they assigned to it the inventions patented when the letters patent were issued to it. The

circumstance that the Davises were promoters or associates with others in forming the corporation is not material. A corporation can have no agents until it is brought into existence, and after that it acts and becomes obligated only through the instrumentality of its authorized representatives. The stockholders cannot bind it except by their action at corporate meetings, and it is undoubted law that notice to individual stockholders is not notice to the corporation, and their knowledge of facts is not notice of them to the corporation."

The Distilled Spirits, 11 Wallace, 336.
Champlain vs. Lakin, 6 Page, 189.
Hoover vs. Wise, 91 U. S., 308.
Mundine vs. Pitts, 14 Ala., 84.
De Kay vs. Hackensack Co., 38 N. J. Eq., 158.
Houseman vs. Jerard Association, 81 Pa., 256.
Insurance Co. vs. Bell, 22 Barbour, 54.
Bank vs. Chase, 72 Me., 226.
Bank vs. Lewis, 22 Pickering, 24.
Bank vs. Cunningham, 24 Pickering, 270.
Kennedy vs. Green, 3 My. & K., 699.
National Canal Co. vs. Lloyd, 4 Watts & S., 393.
Turnpike Co. vs. Thorpe, 13 Conn., 182.

The rule that it is the agent's duty to communicate to his principal the knowledge which he has respecting the subject matter of the negotiation has no application when the agent divests himself of his fiduciary character and becomes a contracting party with his principal, because there is no reason to presume that he will impart infor-

mation which it is for his interest to suppress. "When a man is about to commit a fraud, it is to be presumed that he will not disclose that circumstance to his colleagues."

Kennedy vs. Green, 3 Mylne & K., 699.

Therefore it is the law that no corporation will be charged with the knowledge of one of its directors in any transaction in which such Director is acting for himself, because he represents his own and not the interests of the company.

Housatonic Bank vs. Martin, 1 Met., 308.
Bank vs. Neass, 5 Denio, 337.
Terrell vs. Bank, 12 Ala., 502.
Winchester vs. R. R. Co., 4 Md., 239.
Bank vs. Cunningham, 24 Pick., 270.
Ins. Co. vs. Bell, 22 Barb., 54.

The decisions whose reasoning I have followed find support in nearly every one in which the subject has been directly discussed. When Chatfield and his associates organized the Fulton Company and transferred the J. C. Johnston Mine to it in consideration of its stock to be issued to him, he certainly can have acted for no one but himself, and in antagonism to the corporation. If it be said that the things of which he had knowledge came to him prior to such negotiations, thus waiving the question of the effect of such knowledge upon a subsequently created corporation, my contention is that, in order to charge the Fulton Company with such knowledge, he must have received it in his capacity of agent, and in the very transaction which it affects.

Pringle vs. Dunn *et al.*, 37 Wis., 468.
1 Story's Equity Jurisprudence, Sec. 408, and cases cited.
McCormick vs. Wheeler, 36 Ill., 122.
Mundine vs. Pitts, 14 Ala., 84.
Plympton vs. Preston, 4 La. Ann., 356
Bracken vs. Miller, 4 Watts & S., 102.
Pepper vs. George, 51 Ala., 190.
Houseman vs. Girard, etc., Assoc., 81 Pa. St., 256.
Roach vs. Karr, 18 Kan., 329.
Fairfield Savings Bank vs. Chase, 72 Me., 226.
Preston vs. Tubbin, 1 Vern., 287.
Warrick vs. Warrick, 3 Atk., 294.
Fitzgerald vs. Falconberg, Fitzg., 211.
Worsley vs. Earl of Scarborough, Fitzg., 392.
Steed vs. Whitaker, Barnard, 220.
Hein vs. Mill, 13 Ves., 113.
Mountford vs. Scott, 3 Madd., 34.
Hood vs. Fanestock, 8 Watts., 489.
Morton vs. Jackson, 3 Casey, 508.
Willis vs. Vallette, 4 Metcalf (Ky.), 186.
Howard Ins. Co. vs. Halsey, 8 N. Y., 271.
National Bank vs. Norton, 1 Hill, 572.
Bank of United States vs. Davis, 2 Hill, 451.
North River Bank vs. Aymar, 3 Hill, 262, 275.
Fulton Bank vs. N. Y. & Sharon Canal Co., 4 Paige, 127.
General Ins. Co. vs. U. S. Ins. Co., 10 Md., 517.

Farmers' and Citizens' Bank vs. Payne, 25 Conn., 444.

Farrell Foundry vs. Dart, 26 Conn., 376.

The rule is well expressed and strongly supported in

Bank vs. Chase, 72 Me., 226.

And see

Hoover vs. Wise, 91 U. S., 310.

Werser vs. Morgan, 10 N. Y., 178.

If the contract which appellant sues upon had been recorded, something might be claimed upon the ground of constructive notice, but he was too negligent to do that. He employed Thomson to do this for him. This he admits, notwithstanding he also swears that he never employed Thomson as his attorney at any time. The negligence of the attorney was the negligence of the client; and the mere fact that the attorney in this instance afterwards became a director in the Fulton Company can make no difference.

It must not be forgotten, however, that Chatfield's promise for the company before its organization cannot bind the latter. "A corporation," says Morawetz, "is not responsible for engagements made by its promoters. It is clear that the promoters of a corporation not yet in existence cannot bind it as its agents; nor can the doctrine of ratification be invoked in order to charge a corporation with engagements made on its behalf before it was formed. Hence it follows that the corporate funds cannot be used in paying expenses incurred by the promotors of the company, or in carrying out contracts entered into on its behalf before it was actually formed."

Morawetz on Corporations, Sec. 234 and cases cited.

8. THE APPELLANT HAS, BY HIS ACTIONS, ASSENTED TO AND ACQUIESCED IN, A DISPOSITION OF THE PROPERTY DIFFERENT FROM THAT PROVIDED FOR IN THE CONTRACT, CREATING THE TRUST, IF ANY SUCH TRUST EXISTED.

I have already called attention to what took place at and before the making of the contract of October 12th. What was then said on the subject of assent needs no repetition. Subsequent conduct is not only indicative of laches; it shows acquiescence as well. At the time when the contract was made, and afterwards, as appears from Sayer's testimony, he regarded the property as worthless. For years he saw it worked or knew of its development and made no sign. Silence was acquiescence. While silent, stock was changing ownership, money expended, hazards incurred. The owner of the premises gave no symptoms of recognition, or even of knowledge of the trust, and the appellant, by his conduct, expressed himself satisfied.

Peabody vs. Flint, 6 Allen 52.

In re DePinto Mining Co., L. R., 8 Ch. Div., 273.

If, as he says, he was foolish enough to rely on Chatfield's oft repeated promises to perform (and which Chatfield denies), he did so at his peril. He knew Chatfield could not perform, for he had rendered himself powerless to do so. Chatfield's promise was one thing, the appellee's promise is quite another.

This, appellant's solicitor in the original case perceived, and therefore appellant then swore that Chatfield promised, and had authority to promise, for the company. Indeed, the fact, if it be so, that he relied on Chatfield's subsequent promises, is strong proof of acquiescence in Chatfield's conveyance, and in the consequent changed condition of things, and substitutes the latter's promise to perform for the right to ask an enforcement of the trust. If he as *cestui que trust* concurred—and it matters not whether the concurrence was express or arose from conduct—in the breach of the trust, he is estopped from proceeding against the trustee.

2 Perry on Trusts, Sec. 849, 870.

While the party entitled to relief may either avoid the transaction or confirm it, he cannot do both; if he adopts a part he adopts all; he must reject it entirely, if he desires to obtain relief.

2 Pomeroy Eq. Jur., Sec. 916.

Potter vs. Titcomb, 22 Me., 300.

Bank vs. Groves, 12 How. (U. S.), 51.

"Acquiescence in the wrongful conduct of another by which one's rights are invaded, may often operate upon the principles of, and in analogy to estoppel, to preclude the injured party from obtaining many distinctively equitable remedies to which he would be otherwise entitled."

2 Pomeroy, 817, and following.

Ins. Co. vs. Eggleston, 96 U. S., 572.

If appellant has, by his concurrence, released the trustee, he has thereby released all who would be secondarily responsible.

2 Perry on Trusts, 851, and cases cited.

Can the appellant, after averring in a sworn bill that

he not only acquiesced in but authorized the doing of that which is now declared to be a breach of trust, successfully assert that because of a child-like faith in Chatfield, for a number of years, he can now hold appellee liable for Chatfield's breach, not of the original agreement, but of his subsequent promises? To this query appellant may reply that the Fulton Company and its successors were bound to see to it that the considerations paid to Chatfield should be by him applied to the execution of the trust. This assumes that the purchaser had notice of the trust. But the record shows that appellant not only had notice of but directed the conveyance to the company, and his receipt of its stock in payment therefor. If Chatfield did this, as thus directed, and the company paid him the agreed consideration, then it is discharged from all further responsibility, and to Chatfield alone must appellant look for redress.

1 Perry on Trusts, 452.
2 Perry on Trusts, 766, 787, 801.
2 Pomeroy Eq. Jur., 991 *et seq.*, 1048.
2 Story Eq. Jur., 1132 *et seq.*
Hill, Trustees, 478.
Cleveland vs. Boerum, 27 Barb., 252.

Until appellant establishes the sale by Chatfield to have been a breach of trust, of which the purchaser had notice, there can be no serious claim that the latter was bound, at its peril, to see to the application of the proceeds.

9. THE PROSPECTING CONTRACT UNDER WHICH THE SMUGGLER 2 CLAIM WAS LOCATED AND ACQUIRED, CREATED A TRUST BETWEEN APPELLANT AND HIS ASSOCIATES IN THAT LOCATION, WHICH PREVENTED HIS DISREGARD THEREOF, AND MADE HIS SUBSEQUENT SEIZURE, RE-LOCATION AND ATTEMPTED APPROPRIATION OF IT, A NULLITY.

The only trust affecting appellant was that created by his prospecting contract with Atchison, et. al., which made him their trustee, and his subsequent appropriation of the premises a nullity as to them.

I have heretofore attempted to show that appellant was bound as a mining partner to Atchison, Seaver and Dunscombe, until by their conduct or consent he was lawfully absolved from the obligations thus created. Under that contract he had prior to August 4, 1880, performed labor, made a location, and was proceeding with the development of a mineral claim. A voluntary abandonment by them would, under the doctrine of Murley vs. Ennis, 2 Col., 300, have justified him in a relocation, but instead of abandoning it they continued work and paid bills long after appellant had left the camp. But before Johnston claimed or asserted that there had been an abandoment, the Smuggler 2 had been located, and by that fact the right of present and exclusive possession of the claim was given by the Government to the locators. It was private property from that time so long as the laws should be complied with, and as much the property of all the locators, subject to the Government right, as though a patent had issued.

Gwillim vs. Donnellan, 115 U. S., 49.
Armstrong vs. Lower, 6 Col., 395.

In the event of the locator's death it would have descended to the heirs, and not to the administrator.

Gillette vs. Gaffney, 3 Col., 351.

The locators of a valid, subsisting mining claim need not, unless they desire, secure a Government patent therefor. That right is permissive, not obligatory. It simply furnishes better evidence of title and makes the annual labor required by statute unnecessary.

Chapman vs. Toy Long, 4 Sawyer, 34.
Wolfley vs. Lebanon Co., 4 Col. 119.

The Smuggler 2 could have been conveyed only by deed under the Colorado statute concerning the transfers of interests in lands. Hence, the abandonment, to have been available to Johnston, must have preceded the acts of location. If they were premature it was because he deceived his associates, for he was a miner of experience and information. By seizing the ground, appropriating it to himself, Crittenden and Adair, who had full knowledge with himself of the rights of the others, they became trustees *ex maleficio*, and Chatfield having bought with full notice of these equities, was burdened with the duty of allowing them. The books are full of instances in which men have sought to acquire the interests of others in mining claims by these "Johnstonian" tactics, but in every instance the rights of the true owners have been enforced and the wrong doers have either been ousted or declared to be trustees for the equitable owner.

Suessanbach vs. First Nat'l Bk., 41 N. W., 662.
Alexander vs. Sherman, 16 Pac., 45.
Miller vs. Taylor, 6 Colo., 41.
Erhardt vs. Boaro, 8 Fed., 860; S. C., 113 U. S., 527.
Jennings vs. Rickard, 10 Colo., 395.
Sears vs. Collins, 5 Colo., 492.

"There is no doubt concerning the correctness of the propositions that no one whose duty to another is inconsistent with his taking absolute title to himself, will be permitted to purchase for himself, and that no one can hold a benefit acquired by fraud or a breach of his duty, and title procured to that which may properly be termed a trust estate, by the trustee or agent for his own advantage, and against the interest and without the consent of his beneficiary, employer, or principal, will be declared in equity to be held in trust for the latter."

Wells vs. Francis, 7 Colo., 396.
1 Perry on Trusts, 206.
2 Perry on Trusts, 835.
2 Pomeroy Eq. Jur., 1048 *et seq.*
2 Story Eq. Jur., 1206 *et seq.*
Ewells Evans Agency, 358 *et seq.*
1 Lead. Cas. in Eq., 111.
Wharton on Agency, 241 *et seq.*
Ringo vs. Binns, 10 Peters, 280.
Bush vs. Marshall, 6 How., U. S., 291.
Threadgill vs. Pintard, 12 How., 38.
Jennings vs. Rickard, 10 Colo., 395.
Kayser vs. Maugham, 8 Colo., 339.

A partnership *eo ipso* creates a trust relation

between those composing it. The appellant, of all men, was estopped from disputing the validity of the Smuggler 2 location. His possession of it was the possession of his co-partners under the contract, and his false and fraudulent claim that it was a void location, even if it were true, cannot avail him as against Atchison's grantees, whose equities being charged upon the property, Chatfield was compelled to recognize and allow.

10. SUCH TRUST AFFECTED THE PROPERTY UNDER ITS SO-CALLED J. C. JOHNSTON LOCATION, IN THE HANDS OF APPELLANT AND OF CHATFIELD, WHO WERE CHARGED WITH NOTICE, AND THE LATTER'S GRANTEE, BY COMPROMISING WITH ITS BENEFICIARIES, PROPERLY EXECUTED IT.

The trust which attached to the property in the hands of appellant and afterwards of Chatfield, was properly executed by the Fulton Mining Company, by compromising the J. C. Johnston claim with the Smuggler 2 owners.

Johnston says that when Chatfield was to have taken the property, on October 12, 1880, "*it was represented to him* by Chatfield, Thomson and Sayer that a certain mining claim called the Smuggler 2 was in conflict with the J. C. Johnston," etc. Up to that time, then, it might be said that the Smuggler 2 conflict had not been discussed, if it were not for the fact that the bond of September 14th mentions and includes it, and Johnston and Chatfield had looked at the mine just previous to that date. But the appellant proceeds in his bill (fol. 5, p. 3, *et seq.*) to give the facts concerning the

conflict. It is a remarkable statement when contrasted with his testimony subsequently given. *Yet that is what he told Chatfield to be the case on October 12, 1880,* for he so declares (fol. 7, p. 4). Now, if he so represented the case to Chatfield, it follows that the latter purchased the interest and made the contract on the assumption that to maintain his title he had only to prove by Johnston the truth of what the latter told him. But, as a matter of fact, every material thing which Johnston told him about the Smuggler 2 was false, as Chatfield learned very soon after talking with Dunscombe, which was before the Atchison suits were brought in the United States Circuit Court. He very properly concluded with his attorney that he hadn't "a shadow of a ghost" to succeed. Having ascertained that Johnston had lied about the title and the conflict, the next step was to settle; and settle he did, if that term be applicable to the acceptance by one party of all the terms dictated by his adversary. The Atchison and Holden suits were not brought by the connivance of Thomson and Sayer, as the evidence abundantly shows. This allegation of the bill, like most of the others, is wholly unfounded. If these cases had been tried and had gone to judgment, and the interest in the Fulton Company then allowed, who doubts that Johnston's contract would have availed him nothing? Because they were compromised by the advice of counsel, who saw no other alternative for their client, should he therefore be given his eighth in the face of its conditions? The only objection he could have made would have been that he ought to have been

consulted before the settlement was determined on; but, when told of the compromise, he didn't so much as inquire about its terms. He simply asked for the papers that he might copy them, and, when given him, he didn't even do that. Here, again, was acquiescence.

2 Pomeroy Eq. Jur., 818 *et seq.*, 964.
Bank vs. Alley, 79 N. Y., 536.
Lefever vs. Lefever, 30 N. Y., 27.

The facts which are alleged in the complaints filed by the Smuggler 2 claimants and those which Johnston says, in his bill, that he informed Chatfield of, are essentially different. The former discloses the trust, whose burden was upon appellant. It was paramount to any that Johnston may have sought to afterwards create with Chatfield. It was one which Atchison, Seaver and their grantees could force, and were forcing Chatfield and his co-defendants to recognize and execute. What he could be compelled at law to do, that could he do voluntarily, always being in condition to maintain that it was properly done.

Montgomery vs. Bucyrus Co., 92 U. S., 257.
Chase vs. De Wolf, 69 Ill., 50.
Saveland vs. Green, 36 Wis., 617.
2 Story Eq. Jur., 1267.
Freeman Co-tenancy, 412.
McCready vs. Sexton, 29 Iowa, 380.
Thomas vs. Kennedy, 24 Iowa, 397.
Maxcy vs. Clabough, 1 Gilm. (Ill.), 29.
Wordwell vs. McDowell, 31 Ill., 375.
Savage vs. O'Neil, 44 N. Y., 301.

II. THE APPELLANT NEVER HAD ANY RIGHT OF ACTION AGAINST THE APPELLEE, THE STANDARD MINING COMPANY, BY REASON OF ANYTHING ALLEGED OR APPEARING IN THE RECORD.

The opinion rendered by the Judge who presided over the trial court, makes this perfectly clear, although weightier reasons can be assigned to support it. Indeed, it is surprising that its exemption from all liability should not have been urged by counsel at the first hearing, or that it should not have been noticed by the Court *sua sponte*. The appellant might accomplish the impossible feat of demonstrating the fallacy of every position which we have thus far debated, yet he would here meet a fatal impediment to success. There is no doubt whatever about the conveyance from Chatfield to the Fulton Company having been made with appellant's knowledge, consent and approval. There is none that he expected to receive his contingent interest in the property in the stock of that company instead of by conveyance to him from Chatfield. That was the statement of his bill of September, 1885, and is the necessary result of his testimony in the case at bar. He did not enter into this arrangement with the Fulton Company, but with Chatfield before there was such a company. He knew the company was formed, knew that Thomson and Sayer were among its directors, knew that all directors must be stockholders under the laws of the State, and that the stock of the concern must have been issued to its grantor in exchange for the mine. I do not refer to this knowledge as an element fixing his rights as against the Fulton Com-

pany, but only as one which emphasizes its application to him; for by consenting to the conveyance, and especially as his written contract was opposed to such an act, he could have no recourse against the grantee of the property for his part of the purchase money, but must look to the grantor who was the trustee, and to him alone.

2 Perry on Trusts, 870, *et seq.*

Where one having a contract for the conveyance of lands permitted the other party to execute a deed of trust of the lands to a trustee to secure certain indebtedness, with the power to sell them if necessary for the payment of such indebtedness, held that he had waived his right to the conveyance, or at least had subordinated it to the interest of the trustee and the purchasers under him.

Preston vs. Preston, 95 U. S., 200.

Those decisions which maintain the doctrine that a purchaser with notice of the trustee's title and of the consequent right of the *cestui que trust* to compel the recognition by him of all equities, have no application here, because the facts disclose no wrong on the part of the trustee, whose action, on the contrary, is justified by the knowledge and approbation of the equitable owner. From the organization to the dissolution of the Fulton Company the changes in individual ownership of its stock were many and frequent. The appellant's equity, even if it were as pronounced and notorious as he asserts, attached itself to but an eighth part of the stock. Was that an undivided eighth of every share, or of the mine for the acquisition of which the shares were issued? If the former, the appellant misconceived his action, for

the shares when issued became the private property of the stockholders, who should have been made individual defendants. If the latter, the action still is misconceived, for the company holds the title by the consent of the appellant, who thereby forever lost his right to demand its reconveyance. Not even the appellant will contend that he can demand both. As against the Standard Company, successor of the Fulton, he can demand neither.

Howsoever diverse our views may be of the leading features of the transaction between Chatfield and the Fulton Company, there is no dispute as to one fact, which is that Chatfield received of the stock of that company considerably more than one-eighth, and consequently more than enough to satisfy any trust existing between himself and Johnston. This he sold to Elmer E. Chatfield, who in time disposed of it to Holden and Chick, both of whom purchased in complete ignorance of any equity of appellant, and who afterwards received from the Standard Company shares equivalent to the amount of their holdings in the Fulton. Had appellant proceeded against Chatfield while the owner of this stock, and proven his right thereto under a proper construction of the contract, he might have obtained some relief; he cannot pursue the stock in the hands of an innocent holder for value, nor can he reach it by a proceeding against the company which succeeded the one which issued it, and for which it has issued shares of its own. Shares of stock in the hands of an innocent holder without notice have many of the attributes of commercial paper, and such holders will receive similar protection.

Supply Co. vs. Elliott, 10 Colo., 327.
Bank vs. Lanier, 11 Wall., 369.

If Chatfield had sold the property to Holden, in December, 1881, with the knowledge and consent of Johnston, and Holden had paid the former the stipulated consideration therefor, it must be admitted that Holden would have taken it discharged from any equity existing in favor of Johnston, who would have been compelled to look solely to Chatfield for relief, if to any one. Is a corporation or its successor to be judged by a different standard than that applied to individuals, under the same circumstances? One who, by the consent of the *cestui que trust*, capable of giving it, purchases property charged with a trust, takes the same unencumbered by the trust, and is entitled to all the advantages of a *bona fide* holder for value. It is the wrongful or unauthorized act of the trustee, and of which the purchaser has notice, that causes the trust to cling to it after its alienation, and that can be neither wrongful nor unauthorized which the *cestui que trust* of lawful age and in the full possession of his faculties, knows of and approves.

Buckeridge vs. Glasse, 1 Cr. & Phil., 135.
Munch vs. Cockerell, 5 Myl. & Cr., 178.
2 Perry on Trusts, 849, and cases cited.

This is but the application to the appellant's contract of the maxim, *Volenti non fit injuria*.

If, as appellant alleged in his bill of September, 1885, the Fulton Company took title with knowledge of the trust and under a covenant to recognize and execute it, the appellant, proceeding in apt time, might have enforced the covenant. But no such covenant is alleged in the last com-

plaint, or proven in the record. On the contrary, it is charged that both companies successively took with notice, and each has by fraud deprived the complainant of his property. The complainant, consenting to the transfer, and not showing any covenant, express or implied, to himself, from the grantee, the factor of notice becomes wholly immaterial. No element of liability, direct or remote, actual or contingent, of the Fulton or Standard Company to the appellant, can be detected in any transaction between the parties hereto of which the transcript gives any account. The bill, on this ground alone, was properly dismissed as against the appellee.

I do not claim for the Standard Mining Company any exemption from liability to the appellant which does not as well apply to the Fulton Mining Company. I grant the fact that its position in this litigation is the same, and I contend that the Fulton Company, were it still in existence and the owner of and in possession of the property, never was liable to the appellant under the Chatfield contract, or otherwise.

12. THE CONTINGENCY UNDER WHICH, BY THE TERMS OF THE CONTRACT OF OCTOBER 12, 1880, CHATFIELD WAS TO RECONVEY TO APPELLANT EITHER ONE-FOURTH OR ONE-EIGHTH OF THE J. C. JOHNSTON MINE, NEVER EXISTED.

That part of appellant's demand which relates to the eighth of the mine, intended for Thomson and Sayer, scarcely merits the dignity of notice. No separate contract, as alleged in the bill between

them and Chatfield, for appellant's benefit, was ever made, or agreed to be made. No such conditions as those alleged by appellant were ever attached to the interest. No collusive suits were ever instituted that they might pretend the earning of a fee. The conveyance of the interest was made to them by Chatfield on October 15th, and for aught that appears to the contrary in the record, appellant knew all about it at the time. No attention was paid to this part of appellant's claim by the trial Court at any time, and I do not understand that it is to be urged at this hearing. It is important only in connection with the weight to be given to complainant's testimony as to the other branch of his case. I will be charitable enough to say that his mistakes concerning the Thomson interest arose from confusion of ~~money~~ memory or errors of recollection. Will his counsel be uncharitable enough to assert that such lack of memory disappears at the threshold of his other demand? One who fails so utterly in the attempt to faithfully narrate the circumstances of his case against two defendants, must be an extraordinary mortal if his recollection of the transactions so far as it relates to the other defendant is perfect and infallible.

It will be remembered that Chatfield was to convey to complainant an undivided eighth of the J. C. Johnston mine, in the event the former prevailed in certain legal proceedings he was about to institute for the vesting in him of the legal title to the property. "That the party of the first part upon so acquiring the title *legal and equitable* to the said mine by means of the legal prodeedings so about to be commenced, doth hereby covenant and agree

to and with the party of the second part to convey to the said party of the second part an undivided one-eighth interest," etc.

Johnston somewhere testifies, in his random way, that it was agreed that Chatfield should, under his agreement, apply for a patent, and as soon as it was secured, the former was to receive his conveyance. It is manifest that the contract did not require this action by Chatfield, because it does not say so. It does not contemplate *application to the government* for title, but *the institution of suit against persons who claim adversely to Chatfield.* It is true that he did not bring any action, but the reason is, I think, obvious and all sufficient. By applying for patent, the adverse claimants must either sue him or the consequent issue of the patent would extinguish their adverse right forever. He did, therefore, apply for patent in February, 1881 (fol. 11), and the adverses followed within the statutory period. These actions tendered issue as to every fact which could have been made the subject of inquiry between the parties had Chatfield been the plaintiff instead of the defendant. Their institution was forced by his takthe initiative, and they fully satisfy the spirit of his contract with the appellant.

Havens vs. Middleton, 22 L. J. C., 746.

If the facts alleged in the adverse complaints were true, the plaintiffs therein were sure to prevail against Chatfield. If Johnston had told him the truth, and he could sustain it by proof, he would triumph. But Johnston had not truly stated the facts. What he told Chatfield, he has set forth in the complaint, and he disproves its truth in

every word that he utters on the subject of the Smuggler 2 location. Its owners never had abandoned it; on the contrary, they asserted their claim, paid up the debts which Crittenden and Adair assumed, and continued the work of development long after Johnston himself had left the property. Abandonment is purely a question of intention, to be gathered from the statements and conduct of the party against whom it is charged, and it will not be presumed. It has no relation to breach of contract.

Derry vs. Ross, 5 Colo., 295.
Oreamuno vs. Mining Co., 1 Nev., 215.
Weill vs. Lucerne Co., 11 Nev., 200.
Morenhaut vs. Wilson, 52 Cal., 263.
Stone vs. Geyser Co., 52 Cal., 315.
Mallett vs. Uncle Sam Co., 1 Nev., 194.
Richardson vs. McNulty, 24 Cal., 339.
Myers vs. Spooner, 55 Cal., 257.

The mine had been properly located upon a valid discovery of a lode in place. He proves it by his own testimony. It was properly staked, surveyed and recorded. It had been segregated from the public domain and had become vested in himself and co-locators as realty, the ownership in which was absolute and indisputable so long as the requirements of the law anterior to patent were observed and no forfeiture incurred.

Belk vs. Meagher, 104 U. S., 279.
Armstrong vs. Lower, 6 Colo., *supra*.
O'Reilly vs. Campbell, 116 U. S., 418.

None of these things were disclosed by Johnston to Chatfield. He misrepresented everything. Though interested in the institution of the action

by Chatfield, and necessarily conscious of his indispensable testimony for its success, he left on a trip of indefinite extent for Idaho Territory, and there he remained until his own interest or pleasure prompted his return. When Chatfield discovered the falsity of Johnston's statements, and became aware of the true condition of the Smuggler 2 title, it is not strange that he and his attorneys concluded that he hadn't "the shadow of a ghost" to win. Was he, then, compelled, under his contract with Johnston, to fight the cases to a finish with the certainty of ultimate defeat, or compromise, if possible, and if not, then yield to the inevitable? He had the right; indeed, under the circumstances, it was his duty, if possible, to effect a compromise.

Bacot vs. Heyward, 5 S. C., 441.

2 Perry on Trusts, 482.

But his adversaries, with evident consciousness of their strength and his weakness, declined all compromise. They would accept an amount of Fulton stock equivalent to the extent of their holdings in the Smuggler 2 lode, and not one share less. Finally, and on April 25, 1882, more than a year after the adverses were filed, the Fulton Company, successor in interest, yielded to their terms, the settlement was made and the J. C. Johnston application allowed to proceed to entry.

The subsequent patenting of the premises as the "J. C. Johnston" is a mere incident. The Fulton Company has passed through all the preliminary details for an entry. The expense of survey, of platting and advertising, posting of notices, etc., had been incurred, and would go for nothing

if it was to be done over again in another name. Besides, it would be altogether useless, especially as the only persons entitled to object had satisfied their claims and found it to their interest to economize and expedite matters by proceeding; for in Crossman vs. Pendery, 2 McCr., 139, it had been decided that a claim without mineral would be patented in the absence of objections, and on more than one occasion the rule had been enforced that without the bringing and institution of an adverse claim, the paramount rights of third persons would be lost.

Gwillim vs. Donnellan, 115 U. S. 45.
Eureka Case, 4 Sawyer, C. C., 302.

It has been decided that a claim may be held under several locations and as many different names, and it is common practice for claim owners to buy or otherwise acquire, and, for their protection, keep alive hostile locations covering the same ground.

Lebanon Co. vs. Consolidated Rep. Co., 6 Colo., 371.

A patent acquired under either location would be good. It is not an unusual thing for a mine owner who has applied for patent, and whose application has been adversed, to execute an agreement with the adverse claimant, stipulating that if the latter will withdraw his suit, the former, after securing patent, will convey to him the whole or a part of the ground in conflict, and such agreements have always been enforced.

Suessenbach vs. Bank, 41 N. W., 662.

In what respect does the settlement of April 25, 1882, differ from such a contract, except that

the character of the consideration is altered? "If," said Holden and his associates, in effect, "you will recognize our right to the ground you call the 'J. C. Johnston,' and which we call the 'Smuggler 2,' we will allow you to proceed with your patent, and not otherwise." "I will recognize such right and give you its equivalent in the common concern," is the reply, and so the title is acquired. If Holden had proceeded to judgment and then merged his claim into the Fulton Company it never would have been contended that because the patent names the J. C. Johnston, Chatfield and his grantees must under his contract convey the appellant an eighth of the mine. The compromise if made without collusion and *bona fide*, stands for all that any judgment could represent, and especially if executed. Its actual execution would of course relate back to the time of its acceptance, for then the statute of limitations would begin to run against the parties to it.

Daniel vs. Day, 51 Ala., 431.
Sherman vs. Western Co., 24 Ia., 515.
Wood Limitations, pp. 254, 313.

No collusion or bad faith in the making of the settlement has been shown. On the contrary, the evidence all points to their absence. The demand of the Smuggler 2 owners was not acceded to until all efforts to secure a modification of its terms had failed. Meanwhile the rottenness of the yarn which Johnston had spun concerning the validity of the J. C. Johnston location had been ascertained, and the utter worthlessness of the J. C. Johnston location was more than apparent. Nothing remained for the Fulton Company but sur-

render, and that it proceeded to do with discretion.

At the trial, appellant's counsel complained because he was not consulted about the compromise and given an opportunity to protect "his rights." He acquiesced by his silence when he was notified of the necessity and consequent consummation of the compromise, and as to "his rights" it need only be said that he had none. He, the absolutely indispensable witness for the J. C. Johnston location, had left the country. To consult him under such circumstances would have been farcical and at best could have produced nothing more important than a fresh crop of falsehoods.

The facts proven by the record demonstrate that the appellant never had a greater interest than a fourth in the premises. That he concedes he sold to Chatfield for $1,200. The only contingency by which any additional interest could have been acquired would have been the abandonment of the Smuggler 2 claim by its other owners and their consequent failure to adverse the Johnston patent application. Had they done so, and Chatfield thereby suffered to obtain patent for the J. C. Johnston location without the surrender of any interest or portion thereof to paramount owners, I concede that the appellant, notwithstanding his perfidy to his partners, in 1880, could, by proceeding in apt time, have enforced the contract as against Chatfield, and compelled the recognition by the latter of his claim to an eighth of the premises. But that improbable course was not pursued, and the terms of the agreement have

never made it possible for Johnston to successfully sue any person thereunder.

Suppose that Chatfield and the Fulton Mining Company, instead of complying with Holden's demand and transferring to himself and associates shares of stock representing their interest in the Smuggler 2 location, had conveyed to them a similar undivided interest in the J. C. Johnston location, thereby parting with the title to the thing itself instead of the shares by which it was represented, and the patent, subsequently obtained, should have been issued to the tenants in common so created. Could it be then contended even *prima facie* that the appellant was entitled to a conveyance of an eighth therein from Chatfield under his contract, and that the "legal and equitable title" to the J. C. Johnston location had been vested in him in legal contemplation, since he had not instituted proceedings thereunder, but had compromised instead? In what respect are the rights or liabilities of the parties changed by the circumstance that the Smuggler 2 claimants received satisfaction in stock rather than in the land itself? The stock, as we all know, represents the property of a corporation, and its ownership is the equivalent *pro tanto* of ownership of the company's property, real or personal.

If the appellant, who was an owner of a quarter of the Smuggler 2 location, could by pretending or assuming that his associates were disposed to disregard the terms of a contract thus in force against them, relocate the premises under another name, and thereby acquire an additional quarter interest therein, valid and indefensible as against

the claims and vested rights of his co-tenants, then for the same causes, and in the same manner, he could acquire the whole of it. And this he virtually did, by assuming to devote the remaining moiety to Crittenden and Adair, in consideration of their agreement to pay the debts contracted by the Smuggler 2 combination. He took it all, but said to his confederates, you may have half of this if you will pay the demands of third persons against the property. It must not be overlooked that if the J. C. Johnston location operated to confer upon appellant an additional fourth interest in the ground it covered, it also operated to dispropriate Atchison, Seaver and Dunscombe of the remainder, and invest Crittenden and Adair therewith. If property can be so divested and so acquired, all that is necessary for the covetous and unprincipled is "to imagine they have discovered a flaw" in their neighbor's location, as the witness, Millar, with brutal frankness expressed it (fol. 253, p. 150), and then take forcible possession and make a relocation. Indeed, if the appellant's logic be correct, the ceremony of a relocation was useless, and proclamation alone would have accomplished his purpose. The same logic endows him with Crittenden and Adair's half of the mine, for they, too, failed to pay according to their agreement, and that being the condition underlying their title, the latter reverts to appellant, who should have sued for that as well. He may have had some such intention when, in 1881, he asked Thomson for and received possession of the papers, for among those which he then examined was the contract between Crittenden, Adair and himself,

the only place in the record where such a contract is referred to, or where it appears that any written contract between them ever existed.

From the standpoint of whatever view this case may be considered, there can be but one rational conclusion—the bill is wholly devoid of conscience or of equity. Appellant's so-called cause of action is founded upon a stupendous fraud, of which he was the deliberate author, and the legal recognition of which, as a valid transaction, is essential to the obtaining of the relief which he seeks. Not content with parading his infamy to the inspection of a Court of chancery, he includes innocent parties in his charges of wrong doing, and asks that the property of third persons be devoted to the satisfaction of his demands. Coolly admitting his own disregard of and contempt for the solemn obligations of written agreements, he insists upon holding others to strict performance, even though there may be total failure of consideration, and extends the duty of such obligations, not only to the contracting parties, but to the world besides. He signalizes his right to exemption from the ordinary requirements of the laws concerning remedies and their enforcement by waiting for years in apparent acquiescence of existing conditions, until the risks and hazards incurred by others in possession and driving the work of development have been transformed into certainties and the premises converted from a prospect into a mine, and then, like a bird of prey, swoops down upon the surprised owners, his mind filled with visions of wealth to be acquired as a harvest reaped from the toil of others, and his

tongue vocal with charges of frauds and wrongs against himself, the one great, self-convicted fraud of the whole transaction. Right, justice, equity, law, morals, limitations, laches, a decent regard for honest methods in business and fair dealing between men, are all against his preposterous claim, and unite in supporting the decree of the court below dismissing the bill. They are and should be equally conclusive of his rights, or, more correctly speaking, of the rights of his opponents on appeal.

The relief which appellant asks must be granted upon his testimony, if at all. Its many contradictions are apparent, and they are irreconcilable. In the case of Santissima Trinidad, 7 Wheaton, 283, this Court, in discussing the rule that where a part of the evidence of a witness who has falsified is sustained by other testimony, that part thus supported should be believed, says:

"That position may be true under circumstances, but it is a doctrine which can be received only under many qualifications and with great caution. If the circumstances, respecting which testimony is discordant, be immaterial and of such a nature that mistakes can easily exist and be accounted for in a manner consistent with the utmost good faith and probability there is much reason in indulging the belief that the discrepancies arise from the infirmity of the human mind rather than from deliberate error; but where a party speaks of a fact in respect to which he cannot be presumed liable to mistake—if the act turns out otherwise it is extremely difficult to exempt him from the charge of deliberate falsehood; and Courts of

Justice, under such circumstances, are bound upon principles of law, morality and justice, to apply the maxim, '*falsus in uno, falsus in omnibus.*'"

I respectfully submit that the decree of the Court below was in strict accord with law and equity, and should be affirmed.

C. S. THOMAS,
Solicitor for Appellee.

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IN

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1892.

JOHN C. JOHNSTON,
Appellant,

vs.

THE STANDARD MINING COMPANY OF KANSAS CITY,
Appellee.

Term No. 133.

Appeal from the Circuit Court of the United States for the District of Colorado.

Answer of Appellee to Appellant's Briefs and Arguments.

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The briefs of counsel for appellant were not furnished me until my own was in the hands of the printer. This is my apology for what may prove to be an additional tax upon the patience of the Court. Some notice, however, of the positions assumed by appellant seems to me essential to the protection of the appellee's rights, and I shall be as brief as the importance of the case will permit.

At the outset it seems peculiar that appellant's counsel, while insisting that the old controversy concerning the relative merits of the "Smuggler 2" and "J.C. Johnston" locations is immaterial, nevertheless devote three-fourths of their argument to its consideration. They begin with the original Johnston–Atchison prospecting contract, and for the first time assume that for an additional consideration of $37.50 a month, Atchison and his partners after Rouse abandoned the contract, purchased an additional fourth interest of claims from Johnston, and the latter, not receiving this consideration, was entitled to the one-fourth as against Atchison, Seaver and Dunscombe. The claims mentioned in that contract were of no validity except as they might afterwards be developed. The Badger Boy (and not the Little Pearl, as appellant declares) was relocated as the Smuggler 2; and Johnston can claim no interest in the location which antedated the Smuggler 2 discovery after the latter was made in June. Hence, the contract simply provided for an additional compensation in money to Johnston, and an additional interest in property to be acquired thereafter by the other contracting parties. To conclude otherwise, would be to assert the existence of a power in Johnston to convey realty by executory contract rather than by deed. The contract is an ordinary prospecting one; nothing more, nothing else. Nor can a violation of the contract, either to the extent of justifying Johnston's repudiation of it, or otherwise, be founded upon the sale by Atchison to Browne of a one-sixteenth interest in the Smuggler 2. The latter paid $538 in cash for it, and the money having been

devoted to the relief of the enterprise, and the deed having been recorded, the only effect it could have upon the contract would be to make its abandonment by Johnston impossible, since Browne, not a party to it, had, nevertheless, acquired a vested interest in a claim properly located thereunder. It is not true that the contract did not contemplate sales of fractional interests. That document is silent as to the sale of any fractional interest except that if Johnston desired to sell, his associates had the option to purchase his interest for whatever a third person would pay. Either individual to the contract could sell or mortgage his interest, but should the whole of a claim be sold, the proceeds were to be divided in a certain manner. *The immateriality of this circumstance, however, becomes apparent if we reflect that Johnston's relocation of the "Smuggler 2" was not predicated in any manner upon it.* Mr. Wilson on page 15 of his argument, concedes this; for he refers to the fact that Crittenden was a creditor to the extent of $300, whereupon he and Adair proposed to re-imburse Atchison and others, pay all accrued debts and give Johnston $2,000 in cash besides $100 dollars a month for superintending the work. Johnston did not accept this offer "as the only means of relief to himself of his difficulty," because other means were at hand. The creditors could attach the claim; liens under the local law for work done and supplies furnished could have been filed against it. Within a day or two thereafter Atchison came in with means for payment. The idea of abandonment of the property by Atchison, Dunscombe and Seaver has never ap-

peared in this controversy to any extent except as made prominent by the allegations of the bill. Johnston's conduct, both expressed and implied, is opposed to it, and all the contemporaneous facts refute it.

In addition to what I have said upon this subject in the original argument, I call attention to the following:

First—Johnston did not pretend to repudiate the contract except as it related to the "Smuggler 2." As to any other properties therein mentioned, so far as any act or deed of his was concerned, the agreement remained in full force and operation. Mr. Johnston had no right to repudiate it as to one part of the subject matter and leave it otherwise in force.

Second—The case of Murley against Ennis has nothing to do with the situation of the Smuggler 2 at Aspen on August 4, 1880, and in this connection it may be said that the comments by Mr. Butler concerning the rights and duties of the parties to said contract, occupying pages five to fourteen inclusive, have no application. He assumes that a constant expenditure of money from the time of the location of the Smuggler 2 and the recording of the certificate to and beyond the 4th day of August, was necessary to perfect and hold the claim as against outsiders. In Murley against Ennis, the contract was said to have been abandoned by a failure to perform conditions precedent, before a location had been perfected thereunder. Hence, the parties thereto had acquired no vested estate in the premises. In the case at bar it is conceded by both Mr. Wilson and Mr. Butler that there was a

valid discovery of mineral at least, so early as the 1st of July, and that a well defined vein was disclosed before the Johnston location of August 4th. *These facts, together with the survey and record, made the Smuggler 2 the private property of its locators, and their title was good as against the world without the expenditure of another dollar thereupon until the 1st day of January, 1882, when it would have been subject to relocation only in case the annual assessment work for the year 1881 had been omitted.* The debts which were due to the laborers and others on the 4th day of August, 1880, had been contracted for the development of a well established and properly located mining claim, the title to which was as valid and complete against all save the Government, as though a patent had been issued therefor. The zeal and learning of counsel will be exercised in vain in an attempt to discover an authority which holds that a forfeiture can be declared and enforced against such a location by one of its owners against the others for any reason. If Johnston had that right, he could have exercised it even after the application for patent, or indeed, after patent itself, in the event his associates were remiss in promptly providing the funds necessary for the development of the property the initial steps looking to the acquisition of which had already been taken.

Third—When an abandoned claim is relocated, our statutes require the sinking of a new shaft or the extension of the old one to an additional depth of ten feet. Mills' Annot. Statutes, Sec. 3162. *The appellant nowhere attempted this, but, on the contrary, appropriated the work on the Smuggler 2, both as to discovery and subsequent de-*

velopment, and assumed to carry that over to the J. C. Johnston. Men who *bona fide* relocate a mine on claim of abandonment, do not, in general, leave the county in a body the next day and attempt to make a sale of their relocation elsewhere, and before knowledge of their conduct is supposed to have reached the owners of the original claim. Johnston and his confederates, notwithstanding the former's wounded foot, were swift to leave Aspen and go to Leadville for that purpose, since which time neither of them has ever expended a dollar or struck a pick upon the claim (see fol. 85).

Fourth—A few extracts from the testimony shows conclusively that the so-called relocation resulted from the combined cupidity and rascality of Johnston, Crittenden and Adair. Mr. Butler complains that Johnston's compensation under the contract was less than the wages of good miners at the time. He overlooks the fact that appellant's expenses were to be paid,and that he was also to receive an undivided quarter of everything to be acquired under the contract. At any rate he was satisfied with the compensation stipulated.

James Millar is paraded by appellant's counsel as a credible witness. I make no issue as to this, and call attention to some of his statements in connection with the location of the J. C. Johnston. He was asked if he recollected "the occasion and circumstances of the J. C. Johnston location and Smuggler 2." His reply was:

"Well, I was sitting one day in Mr. Crittenden's office and it appeared that Mr. Johnston had given Mr. Atchison a power of attorney; he was trying to have it revoked. There was a power of

attorney and he was kicking about it. He refused. He had it revoked. I remember that distinctly."

Q. That was about the time of the location of the J. C. Johnston? A. YES, SIR; AND MR. CRITTENDEN, MYSELF AND ADAIR DISCOVERED A FLAW IN THE LOCATION OF THE SMUGGLER 2 * * * * THAT WAS OUR IMAGINATION * * * * AND LOCATED THE J. C. JOHNSTON.

Q. Do you know when mineral in place was first struck on Smuggler 2? A. Mr. Johnston struck that in the 70-foot tunnel.

Q. Do you know when that was? A. *That was in July; yes.*

Q. I will ask you at the time you went to work, the time you first went to work for Mr. Johnston, mineral in place had been struck? A. Johnston run the tunnel that is now known as the upper tunnel, and discovered mineral. He came very near missing it, though, I tell you; if he had been a little higher he would have got left. *I and Joe Adair took a look at it. I spoke to him and said I, "Joe"* (he was working for this here Josephine Company), *"you want to get an interest in this Johnston," and he said, "I will try," and said he, "Millar, I want you to help me," and I said, "I will do it;"* AND WE WENT OVER AND EXAMINED IT, AND "THERE WAS MINERAL AND PLENTY OF IT."

Q. *That was when?* A. *Latter part of July or middle of July;* I am not certain about dates; I will not agree to dates (fol. 253).

This credible witness, who also worked upon the property as the Smuggler 2, as late as November, 1880 (fol. 251), and was paid for it by Dunscombe, discloses an intention upon the part

of Adair to secure the property as early as the middle of July, when it appeared that "mineral and plenty of it" was in sight. Johnston unquestionably desired to do better or as well; therefore, if he could only get a larger interest in the property and something besides, he could be induced to betray his associates. The alleged indebtedness of Crittenden was a farce; for Koch says that Crittenden had a law office but had no store at all (fol. 202). Millar was asked if the mine was indebted to Crittenden and Adair, to which he replied, "Nothing that he knew of" (fol. 264). Let Johnston now supply the proof of the motive which actuated him in this so-called relocation.

Q. (To Johnston). Did this plan or proposition of relocating the property and calling it the J. C. Johnston originate with you or your new partners, Crittenden and Adair? A. Well, it came about in a conversation between myself and Mr. Crittenden, I do not know who originated it. Mr. Crittenden wanted his money and the men wanted their money. * * * *The plan that we adopted after thinking the matter over and conversing with Mr. Crittenden* (fol. 248).

Again:

Q. Now state fully the circumstance of the location of the J. C. Johnston claim? A. AFTER I HAD DISCOVERED ORE, *Mr. Crittenden, we owed him, I don't know how much, three, or four, or five hundred dollars. I don't know how much it was. The whole amount of indebtedness was about $1,000, to the men and everything. Mr. Crittenden came to me and said he would assume all the indebtedness, including his own. I told him I didn't know how I could get*

the money for him unless they came and brought it, and he said to me, "I WILL ASSUME ALL THE INDEBTEDNESS AND PAY OFF ALL THE MEN IF YOU WILL LOCATE THIS AGAIN—THE SMUGGLER 2,—AND GIVE ME HALF OF IT, AND I WILL GIVE YOU SO MUCH MONEY—$2,000 I THINK—BESIDES PAY YOU $100 A MONTH AND PAY YOU SOMETHING DOWN. Finally I concluded that I would do it, so as to pay the men off. I supposed these parties had abandoned their mine, at least they hadn't come in, so I located the ground again, and Mr. Adair and Mr. Crittenden got one-half of it. The contract was made between Crittenden, Adair and myself. They came out to Leadville." (Fol. 339.) The location "was made at Crittenden's suggestion. He spoke about it first." (Fol 387.)

In the middle of July, Adair having seen the mineral exposed in the claim, agreed with Millar that he ought to have a share of it, and began, with Crittenden from that moment, to scheme to that end. Johnston, the recipient of $75 a month, was bribed with an offer of an additional quarter interest in the mine, plus $2,000, plus $100 a month indefinitely, plus something down.

Fifth—The pretense that Atchison, Seaver and Dunscombe were heavily indebted under their contract and either would not or could not pay, was without foundation. At the very time the J. C. Johnston was located, Atchison was on his way to the camp with money for the relief of Johnston. Millar says he was told that Atchison paid $700 to Crittenden as a consideration for his conveyance of the J. C. Johnston (folio 254) and Johnston admits that some of the money due to the men was then paid. It is true that Atchison

says he paid no such sum to Crittenden. He does say, however, that he went over on August 4th or 5th to pay the men off (fol. 69). Dunscombe, who went with him, says the same thing. It is strange that Mr. Atchison should have told Mr. Johnston, when the latter was overtaken in Leadville, that he did just right in relocating the property, and it is difficult to reject the conclusion so emphatically announced by Atchison, at fol. 72, that it was "simply a lie." It is not true that Atchison gave to Crittenden a spurious check for $300. He swears that he did not. It does not appear what Crittenden's complaint against Atchison was about, but it is undisputed that in September, 1880, Atchison returned to Aspen, and while there paid some attention to the property (fol 72). He could easily have been arrested if, as a matter of fact, he had been guilty of any offense against Crittenden. After the attempted relocation of the property as the J. C. Johnston, appellant was the only one who may be said to have abandoned the contract. Millar says that the men, together with himself, got their money. He received $50 from Dr. Dunscombe, and near the 1st of December (fol. 252) he was paid off in full, in money and notes, at Thomson & Sayer's office, by Sayer (fol. 255). He got his money from Dr. Dunscombe (fol. 256). Dunscombe sent $500 over by Koch (fol. 261). Koch paid as far as the money went, and gave time checks for the balance, which was paid afterwards by Dunscombe (fol. 261). Koch testifies that he received a package of money which was not less than $600, nor more than $800, from Dr. Dunscombe, and paid it to Millar and the six men

working on the property, as per Dunscombe's directions (fol. 201). Both Dunscombe and Atchison testify to the payment of these sums. Johnston says: "I don't know how much money they had put in under the contract, and don't think it was over $500 or $600 (fol. 337). He also says Mr. Atchison came over there when the Smuggler No. 2 was located, and paid part of the men and took the pack animals out; also, that he does not remember the exact amount of the debts, but he was working four or five men, and Atchison came and paid him $75 or $80, which he divided up among the men (fol. 334). He also says they were never paid in full until paid by Crittenden and Adair (fol. 379). It is undisputed that Atchison paid Crittenden whatever the latter had paid of the indebtedness, so if Crittenden and Adair paid the men in full, Atchison re-imbursed them (fol. 380). He also paid White $100 and Johnston $25 (fol. 331), and that one man who had been on a tear for a few days demanded his money immediately, and Atchison gave him $75 or $80 at once to finish paying him up. When asked how much they paid the appellant altogether, his answer was: "*I could not say exactly; when I went to Aspen, and Seaver turned back, he gave me some money, and he says, 'I will give you whatever you want if you will go there and set up stakes'; I said, 'I will do it for you,' and he takes out his pocketbook and gave me some money*—I DON'T KNOW HOW MUCH. I went over there and stopped a couple of weeks." (Fol. 371.) They paid him $100 when he left Aspen (fol. 371). He also said, on another occasion, Dunscombe paid him all money he ever received. He does not re-

member ever receiving any from any of the other gentlemen, except $75 or $80 that Atchison paid when he came in, and in the same breath admits that Seaver paid him $100 (fol. 237). Dunscombe is emphatic in the statement that he gave Johnston $200 or $300 in cash to pay for the work that would be done before he came in. His testimony upon this subject is too extensive for quotation. It is somewhat indefinite, but that criticism can be made of all the testimony which refers to the amounts of money paid or to the amount of indebtedness. Millar says McPherson, the Laplander, Fisher and Grace all got their money in the fall after the election (fol. 261). Seaver says everything was paid up when he left (fol. 690), and that he furnished all the money Johnston wanted at the time (fol. 696). Dunscombe says he sent Johnston's wife money at Littleton (fols. 163 and 174). He also says that the money received from the interest sold to Browne was put into the property again to pay off the debts (fol. 176); that Johnston never complained to him that they were not performing the contract.

Now, from this mass of testimony it is difficult to form a conjecture either as to what Johnston received, or what the indebtedness was. If any conclusion can be legitimately drawn from the various statements above quoted, it is that Johnston received money whenever he wanted it, and matters were allowed to run in a somewhat loose way, Atchison, Seaver and Dunscombe paying and intending to pay whatever was necessary while Johnston seems to have been taken care of and provided with sufficient means right along. The idea

that $525 was due Johnston when Atchison met him at Leadville, is preposterous. He went over in March and remained until the 1st of August; this would not exceed five months all told. He received money from his several associates at different times. Upon the hypothesis that he had received nothing, his partners would have owed him but $375 under the contract. They furnished him an outfit as agreed upon, and he admits that Seaver paid him all the money he wanted while his wife was supplied by Dunscombe. The unpaid indebtedness was a mere pretext for yielding to the temptation of Crittenden, and when the latter was re-imbursed in Pendery's office in the presence of Frank Eames (fol. 70) that pretense disappeared. *I am justified, therefore, in asserting that no cause existed for the abandonment of the Smuggler 2 location; that the title to such location had been perfected by an observance of all the initiatory requirements, and its abandonment was not possible without the consent of all the persons concerned.*

Mr. Wilson says, on page 18 of his argument, that Johnston refused to sign a deed of his interest in the Johnston claim to Atchison until he got his money; that he did not surrender a location certificate of the claim at the time, and that both Brown and Atchison are mistaken in their assertion that such was the case. This statement is based upon the fact that the description of the property contained in the deed from Crittenden and Adair to Atchison coincides with the certificate which Johnston afterwards recorded, and not with the one which Sayer found in the office of Taylor and Ashton. If Atchison had drawn the

deed in question or had compared the description with the location certificate which was surrendered to him and sworn that it was the same, appellant's position would be unassailable, *but the facts are that the deed from Crittenden and Adair to Atchison was prepared by the former*, and they doubtless had the certificate which was afterwards recorded (fol. 222). The surrendered certificate was in the handwriting of Johnston (fol. 223). So Atchison swore on the 21st of July, 1888. Jonnston occupied the stand on August 3d and November 12, 1888, thereafter respectively, and while testifying to many other things did not deny this fact. Brown saw the certificate in Kansas City; Atchison sent it to Taylor & Ashton and there it was found. Is it not probable that Johnston surrendered the defective certificate for the purpose of misleading Atchison in order that he might ultimately perpetrate the fraud which was contemplated when the J. C. Johnston claim was located? Counsel magnify the fact that Atchison directed Millar in November not to destroy the Johnston location stakes and notices. They claim such conduct is proof conclusive of the waiver by Atchison of the Smuggler 2 location. I have before adverted to the fact that, under the decisions, a mining claim may be held under many locations. Since it was asserted that Smuggler 2 was not a completed location, it is not surprising that the stakes of the Johnston should have been kept in place. *Besides, since the Smuggler 2 survey was practically adopted, the stakes were doubtless the same but differently marked.*

It is claimed that the settlement with Critten-

den and Adair and the taking of their deed of the Johnston claim, and the agreement to settle with Johnston for an additional quarter interest claimed by him in the new location (which we deny), and to take his deed, therefore, was a recognition and adoption by Atchison of the Johnston location. This virtually means that if a man buys his peace from his adversary and receives at the time some written recognition of his settlement, he is estopped to deny the claim of said adversary thereafter. Not only so, but the circumstances under which such arrangement was made, together with the subsequent conduct of the parties in developing the Smuggler 2 and bringing suit for the assertion of title, must be ignored. It is strange that counsel should, on page 11, concede that a well defined vein was disclosed shortly before the Johnston location of August 4th, and then, upon page 24, deliberately assert that the Smuggler location was prematurely made, no mineral having been discovered before its date. The two statements may be consistent, but the only purpose which they can serve in the same argument is to blind the eyes to the law which confirms the validity of locations upon discovery subsequently made. It is conceded by Wilson that the bond of appellant to Chatfield, in September, 1880, included, among other things, half of his interest in the Smuggler 2. Is not this the highest recognition by appellant of the validity of that claim since it involves the giving of a deed and consequent transfer of the title thereto to some third person? Mr. Wilson misquotes the effect at least of Mr. Chatfield's testimony when he says that the latter swore

that the services of Thomson & Sayer were never performed. Mr. Chatfield was testifying with reference to some specific legal service about which he was questioned. He does not testify that Thomson & Sayer did not earn their fee. In this connection it is well to remember that the agreement between Thomson & Sayer and Johnston, or with Chatfield for Johnston, is an afterthought of appellant. I do not mean that he has not always claimed that Thomson & Sayer did not earn their fee; I mean that not until the bill was filed in the case did appellant ever claim that Thomson & Sayer executed a written contract with Chatfield, whereby the terms under which they were to secure a one-eighth interest were expressly specified. This feature of the controversy is as novel as it is unfounded.

Mr. Wilson has no right to say, on page thirty-four, that when giving his testimony Johnston was wholly ignorant of the deed from Chatfield to Thomson & Sayer conveying a one-eighth interest in the Johnston lode. The appellant nowhere says this, and his failure to do so justifies me in assuming that he knew all about it.

The conclusions which Mr. Wilson reaches on page thirty-five of his argument can only be warranted by a repudiation of more than half of the allegations of the complaint which he prepared when he brought the suit, for there it is declared that the adverse interest which threatened Johnston's title and about which Thomson & Sayer to be employed *sprung from and were founded upon the* Smuggler 2 location. Mr. Wilson says, on page 39, that Johnston understood there was to be an appli-

cation for patent, and that he was not to receive his interest back until the title had been perfected in that manner. It is true that he so testifies, and the fact that he volunteered this statement demonstrates that the writing contains but a small portion of the contract. What he said upon the entire subject, together with what he alleged in his complaint must be examined to determine what the contract was.

The application for patent is alluded to on page 51 as "the consummation of the fraudulent work of Chatfield and his co-defendants, the purpose of which was to rob Johnston of his interest in the property." In one breath we are told that it was our duty under the contract to apply for a patent, upon the obtaining of which Johnston was entitled to his interest, and in the next we are told that the application for patent by Chatfield was the consummation of a fraudulent scheme having its origin at some antecedent period. It is difficult for me to answer this sort of reasoning.

Mr. Wilson thinks that the manner in which the Fulton Mining Company's stock stock was divided among Mr. Holden and his friends is conclusive of the fact that they had abandoned the Smuggler 2 title and had adopted the J. C. Johnston in its entirety. He forgets that the interest which Holden represented, and which for the most part came through Atchison was precisely the same whether applied to the Johnston or Smuggler title. Dunscombe undoubtedly yielded some part of his interest to Chatfield, Thomson & Sayer, and Seaver probably did likewise. What these gentlemen did is wholly unimportant. It is noticeable that

when Mr. Wilson attempts to apply the supposed J. C. Johnston interest of Holden and his associates to the amount of stock received, his balances do not correspond, and this occurs when he attempts to make such division according to the Smuggler 2 interest. *It is also noticeable that Browne never claimed anything in the J. C. Johnston location, and that the settlements made with Holden included his interest in the Kansas City as well as the Smuggler 2 claims.* There is no pretense of an abandonment of the Kansas City, or a recognition of the Chatfield location in place thereof. It would be strange indeed if Holden should have abandonded the Smuggler 2, and yet not only recognized but insisted upon the existence and validity of the Kansas City even to the extent, as Mr. Wilson claims of securing a part of the quarter of that claim which he says Mr. Johnston was unquestionably entitled to.

It is hardly fair for Mr. Wilson to distort the allegation in the appellee's answer, that the matters set forth in the bill filed by Atchison and Dean are true, and then draw the inference that such allegation was intended to cover all the averments, both substantial and formal, of the bill referred to. The allegation is that " the matters thereinbefore stated concerning the contract, the relation between the parties, the location of the Smuggler 2 and Johnston lodes, and the matters set forth in such bill are true." All the matters, in other words, contained in the Achison bill which had theretofore been stated in the answer to Johnston's bill were true. This is the scope and extent to which the allegation was

intended to go, and no ingenuity of construction can legitimately carry it further.

Upon the question of laches, neither Mr. Wilson nor Mr. Butler have much to say, doubtless for the reason that little can be said. Each gentleman complains that the issue was raised at a time when they could not meet it by proof which could have been furnished. No application to take additional proof upon the subject was made, but the question was met with counter argument in the Court below, and the position there assumed was that no laches existed, and even if the record disclosed it, advantage thereof could not be taken, except by pleading it. The last proposition is now expressly waived. The other, I contend, has not been maintained. Mr. Butler says, on pages 21 and 22 of his argument, that having the whole legal title which appeared of record concerning the Johnston lode, Chatfield and his associates "organized the Fulton Mining Company, and conveyed to it all the title so acquired to the Johnston, and made in its name application for patent. This was not consistent either with the verbal understanding reached between Chatfield and Johnston in October, or even with the written agreement which was supposed to have been drawn in accordance with it, but it was an open and bold attempt to get title to all of the J. C. Johnston lode, to the exclusion of Atchison, Seaver and Dunscombe and their grantees, and also with the evident intention of getting one-eighth of Johnston's title for nothing, and, perhaps, with the still further fraudulent intention to cheat and defraud him out of the other one-eighth by various pretenses and excuses." If this be true,

then it must necessarily follow that when the Fulton Company was organized and the title conveyed to it, Johnston's right of action at once accrued, for if not consistent with the agreement, but an open and bold attempt to get title and to cheat and defraud Johnston out of his fourth, then certainly it was a violation of the contract, and Johnston's cause of action must date from that time. This confirms the position which I have assumed throughout the argument. On page 25, Mr. Butler says, after reviewing the conduct of Chatfield, Thomson and Sayer: "Chatfield at once became a trustee for the whole undivided one-fourth conveyed to him, and Johnston, after the discovery of the bad faith of Chatfield and the frauds perpetrated upon him, at once became vested with the right to demand the conveyance of the whole interest wrongfully obtained from him."

Johnston discovered this "bad faith" when the deeds and certificate were recorded, when he got the papers from Thomson, in 1881, and found that the contract had not been recorded, and when he was told that the suits were compromised. If he had any vested right to demand a conveyance of the whole interest, he had it then; now both the statute and the doctrine of laches are against him. But Mr. Butler complains that in deciding the question of laches against the appellant the District Judge, among other things, "erred in assuming that the agreement of October 12, 1880, between Johnston and Chatfield was one by which or through which the rights of Johnston were to be determined." If this was an error, it must follow that the first decision made by his Honor, and

which both counsel so freely applaud, was also erroneous, because that too was founded upon the agreement of October 12, 1880. Until the filing of Mr. Butler's brief, I have always assumed that the agreement of that date, partly in writing and partly in parol, constituted the foundation of this suit. How the District Judge could have assumed anything else, and how the rights of Johnston can be determined except through such agreement, Mr. Butler does not attempt to explain. Mr. Butler and Mr. Wilson refer to the fact that Mr. Johnston had brought two suits prior to this one. The first one, Mr. Wilson says, was erroneously dismissed by the United States Court for want of jurisdiction, notwithstanding the fact that upon the face of the bill it appears that one of the defendants was a citizen of a Territory. Both gentlemen go out of the record to apologize for the second by saying that it was dismissed because of the death of appellant's counsel. The record is silent as to the cause of dismissal, and it is singular indeed if, because a lawyer connected with a case unfortunately dies, the case must die also. A copy of the bill in the second case does not appear in the record. The first one does, and as before stated, it seems to recite a different contract and ask for different relief from that which is now prayed for. Mr. Butler enters into a labored argument to show that the property was not very valuable when the first suit was brought, and that comparatively nothing had been expended in its development, hence its condition has not materially changed. He takes the reports made to the Fulton Mining Company as the foundation of his discus-

sion, ignores the fact that a long lease had been executed upon the property under which a large amount of development had been done, and is silent concerning the allegations of his bill wherein it is declared that at the time of the institution of the suit the mine was worth $1,000,000, and that defendants had taken large proceeds therefrom.

Mr. Wilson quotes the testimony of Johnston at great length for the purpose of showing that the action was brought in apt time. From that testimony, it appears that when the contract was made he thought it would take about a year and a half to get patent. He should have expected it, therefor, by the middle of the year 1882. He went to the White River then, but made inquiry of Thomson before his departure. He did nothing afterwards except to take the statements of Chatfield on trust, and finally, through his lawyer, he claims to have learned of the issue of the patent in 1885. I have already cited numerous authorities in support of the proposition that one must be diligent, not only in bringing suit, but in ascertaining facts, which may affect his rights.

I call attention to one more case,

Teall vs. Slavin, 40 Fed. Rep., 777,

upon this subject. Judge Sawyer there says that "Means of knowledge are equivalent to knowledge; *that a clue to the facts*, which if followed up diligently would lead to a discovery, is, in law, equivalent to knowledge. * * * Proper diligence could not have failed to find a clue that would have led to evidence not to be resisted. With the strongest motives of action, the plaintiff was supine. If underlying frauds existed, as he alleges,

he did nothing to unearth them. It was his duty to make the effort."

Mr. Wilson is in error in saying that the deed from Chatfield to the Fulton Mining Company being a quit-claim, the company and its creditors could not claim protection as *bona fide* purchasers for more than Chatfield's actual interest at that time. The deed is not one of quit-claim; it is what in the State of Colorado is popularly known as a mining deed, and while the word "quit-claim" appears therein, it contains words of grant, as well. The Colorado Statute provides that *every estate in lands which shall be granted,* etc., although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inheritance if a less estate be not limited by express words, or do not appear to be granted, devised or conveyed by operation of law.

Mills' Ann. St., Sec. 433.

It was sufficient to carry over to the Fulton Company and its grantees any title which Chatfield might subsequently acquire.

From page 83 of Mr. Wilson's argument, I quote the following: "It should also be remembered that Johnston left his contract with the attorneys, Thomson and Sayer, who promised to have it recorded, as Johnston testifies. The fact that he left the contract with them shows that he regarded them as his attorneys, though they deny that they were employed by him. Prior to the bringing of the suit Johnston made demand upon them for this contract, which demand was refused,

and it was necessary to get an order of Court to obtain an inspection of it."

"This explains and excuses Johnston's failure to record the instrument. He supposed he was dealing with his friends, instead of with parties who were plotting to get his interest away from him."

The statements above quoted must have been made for the purpose of excusing Johnston's apparent laches. It is true that Johnston left his contract with somebody; it is true that he says Thomson and Sayer promised to have it recorded. If he regarded them as his attorneys, then his testimony is not to be believed, for he says that at no time were they in his employ. It is not true that prior to the bringing of the suit he made demand upon them for the contract, which demand was refused. He does not so testify. He says that he wrote to Thomson & Sayer and got Northrop to write and Northrop went up and he thinks he gave Northrop instructions to get the papers or copies. He then says they refused his request so far, but is silent as to what disposition was made of Northrop's request. It is not true that it was necessary to get an order of Court to obtain an inspection of the papers. An order of Court was obtained, upon an affidavit and petition, but the refusal upon which it was based consisted of the impossibility to furnish a contract which had no existence. Mr. Northrop obtained a copy of the contract of October 12, 1880, before he drew the complaint of 1885, and made such copy an exhibit marked "E" to his bill, which exhibit is in the written transcript of the record on file in this Court (see fol. 312, printed

transcript). How this can explain and excuse Johnston's failure to record the instrument is difficult to determine.

In March, 1881, he asked to see the papers and make copies, and they were given to him, but he declined to do anything about it. To contend at this time that he could not see the papers, that he did not have them and could not get access to them save by an order of the Court, is, to say thel east of it, unfair, and the fact that resort must be had to such statements is significant as showing how desperate appellant's case must be.

The stipulation containing notice to the Standard Mining Company is relied upon by both parties as being conclusive upon the subject. That notice of what does not exist must be admitted, is remarkable. It is a contradiction in terms to say that the plaintiff has sufficiently proven notice to the defendant of the trust and conditions on which the defendant Chatfield took complainant's deed, but that there is a continued denial that no such trust or condition existed. The stipulation besides does not affect or refer to the Fulton Mining Company, through which the Standard Company derives its title. I have heretofore attempted to show that the Fulton Company was a *bona fide* purchaser for value. I shall not weary the Court by adding anything thereto.

I submit that the appellant's counsel have furnished no reason which would justify this Honorable Court in reversing the action of the Court below. Respectfully submitted,

C. S. THOMAS,
Solicitor for Appellee.

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Supreme Court of the United States,

OCTOBER TERM, 1892.

TERM No. 188.

JOHN C. JOHNSTON,
Appellant,

vs.

THE STANDARD MINING COMPANY OF KANSAS CITY,
Appellee.

Brief in Reply for Appellant.

HUGH BUTLER,
Counsel with Appellant,
Denver, Colorado.

In the Supreme Court of the United States.

JOHN C. JOHNSTON,
Appellant,

vs.

THE STANDARD MINING COMPANY OF KANSAS CITY,
Appellee.

Term No. 133.

Appeal from the Circuit Court of the United States for the District of Colorado.

Brief in Reply for Appellant.

We shall not attempt any extensive reply to the elaborate briefs and arguments filed on behalf of the appellee, but desire to call attention to certain inaccuracies in the statement of the evidence and erroneous conclusions drawn therefrom. Pursuing the order followed in the defendant's brief and argument, and commencing with the statement of the case, we remark, that it is not quite clear from the evidence whether the Smuggler Two claim was a relocation of the Badger Boy or of the Little Pearl claim. The only testimony given on this point was that of the complainant, who, in different portions of his testimony refers to the Smuggler Two as a relocation of the Badger Boy and also of the Little Pearl (fols. 326-371). He also states that this claim, the Smuggler Two, was at one time called the Badger Boy, and at another time the Little Pearl. The prospecting contract provides that, on the sale of the Little Pearl, Johnston and Rouze were to receive a larger sum than on the other

claims, from which it would seem that more work had been done on this one and a greater value placed upon it. From this fact, I think we are warranted in the conclusion that the Smuggler Two was the one referred to in the contract as the Little Pearl.

The statement is made that Johnston became intoxicated and Rouze abandoned the contract, as if the contract was abandoned by Rouze because Johnston became intoxicated. On this point, Acheson testified that at Buena Vista, Rouze was eliminated from the arrangement (fol. 66). Seaver testified that Rouze simply stepped out (fol. 688). Dunscomb testified that Rouze did not want to go across the range; that Dunscomb and his partners had bought some property of Rouze at Maysville, and that he (Rouze) had a lot of money, and had not had any for some time before that, and made up his mind when they got to Buena Vista that he would not go; that they had got him several hundred dollars for some interests in Maysville (fol. 170). Johnston testified that Rouze dropped out at Buena Vista; that he had some claims or interests in South Arkansas; that he (Johston) understood they were to pay him some money at Buena Vista, and when they got there, they had a falling out, "and my understanding was they did not pay the money and Mr. Rouze quit" (fol. 369).

It is stated that between the time of Johnston's arrival in Aspen, in March or April, and the location of the Smuggler Two lode, Acheson, Seaver and Dunscomb had already visited the new camp of Aspen. As a matter of fact, none of them had visited the camp at the time of the location of the Smuggler Two, which was on the 15th of April, 1880 (fol. 547). It is also stated that a ledge or vein of mineral ore had been discovered and exposed by Johnston on the ground in controversy before the location of the ground as the Smuggler Two. As a matter of fact, no such discovery was made until about the 1st of July, 1880, two months and a half subsequent to the location of the Smuggler Two, and this was after Dunscomb and Seaver had left the camp. This

appears from the testimony of White and Johnston (fols. 363, 247, 333, 239, 440).

It is stated that "it is evident that the object in going to Leadville was to sell the Johnston mine, and get it by that means into the hands of some assumed *bona fide* purchaser before the character of its location was discovered and exposed by Acheson and his partners." There is no evidence to support this statement, except the fact that some attempt was made to sell the mine by Crittenden and Adair, but Johnston refused to sign the papers because the sale did not suit him, and because Mr. Acheson was there (fols. 245–255). The statement is made that Acheson and his partners assumed, and had a right to assume, that all trouble, so far as the location of the J. C. Johnston was concerned, was over, and that by his surrender of the location certificate, the appellant had acquiesced in the assertion of his associates of the integrity of the Smuggler Two location. Johnston had not surrendered the location certificate; on the contrary, he kept it. That the certificate which has been produced as the alleged original certificate which Johnston surrendered to Acheson, was not the original or genuine certificate, and that the other certificate which Johnston kept was, and was known to be such by Acheson, is shown by the fact that Acheson adopted the description of the claim as contained in the certificate, which was afterwards recorded by Johnston, disregarding the description in the first defective certificate, as shown in our first brief. Acheson also adopted the new location, and directed the foreman to preserve the stakes and notices of the J. C. Johnston claim on the advice of his attorney, Judge Pendery (fol. 260).

The argument on behalf of appellee is arranged under twelve propositions.

As to the first, it is unnecessary to add much to what has been said in the first briefs on behalf of appellant. Under this proposition it is stated that, "when Johnston surrendered the location certificate to Acheson, the

latter agreed to pay him what he owed and square up the debts of the concern. This Acheson was liable for in any event, and his promise did not in any wise impose upon him or give Johnston a new privilege. Even if it did, he should have asserted it in the courts of justice and compelled its performance in a legal way. He could not, by reason of Acheson's disregard of his contract, revive the Johnston location and assume to be the owner of a half interest or a quarter, which he did by making and recording a second certificate, a manufactured location, as one of the witnesses (Crittenden) called it, when, in December, 1880, he informed the witness Brown of the fact."

On this statement, and on the statement that "Johnston's subsequent conduct in recording the location certificate and then bonding a fourth of the new location to Chatfield on the basis of his ownership of a half was as bald and conscienceless a fraud as was ever perpetrated upon innocent men," and other strictures of the same character, we remark that counsel's version of the evidence is as incorrect as his strictures upon Johnston are unfair and unwarranted. As already shown, Johnston did not surrender the location certificate to Acheson. The J. C. Johnston title had not been abandoned by either Johnson or Acheson. On the contrary, Acheson had taken a deed of this title from Crittenden and Adair, which he afterwards recorded, and he gave express directions to the foreman on the ground to preserve the location. Johnston testifies that Acheson prepared a deed for him to sign, which he refused to do until he had paid the consideration therefor, amounting to $525. This was the agreement as shown by the testimony of White and Johnson, and corroborated by the deed from Crittenden and Adair to Acheson, which, as already shown, adopts the description of the location certificate which was subsequently recorded by Johnston, and not that of the one which Acheson claims was surrendered to him.

This left Johnston the owner of a half interest in the

new location subject to Acheson's right to purchase it on payment of $500. This amount was to have been paid within a few days. It was not paid, and Johnston, after waiting a full month and refusing the importunities of Chatfield to purchase before that time, was perfectly justified in supposing that Acheson preferred to keep the $500 to paying it for the fourth interest in the property. As a matter of fact, he had squandered the money which he and his partners had raised for this purpose, so that he was unable to carry out his agreement with Johnston. When Crittenden reported the matter to Brown, in December, 1880, he was probably ignorant of Acheson's default, supposing that Acheson had settled with Johnston, as he had agreed to, and Acheson no doubt represented to his partners that he had paid Johnson.

The next point made by counsel for appellee is, that the contract alleged in the complaint did not constitute the entire agreement between the parties, but on the contrary, such agreement contemplated the formation of a corporation and the conveyance by Chatfield of every interest mentioned in said contract to such company when it was incorporated.

On this point, we remark that the answer of the Standard Mining Company avers (fol. 50), that the settlement with Dunscomb, which was made on or about the first day of December, 1880, a month and a half after the execution of the contract in question, was the "first time that the incorporation in connection with said J. C. Johnston mining claim was ever mentioned, suggested or contemplated by any person," and the testimony of Dunscomb, Chatfield and Sayer, was to the same effect. Johnston testified that the verbal agreement and understanding prior to the execution of the contract, did contemplate the formation of a corporation. On this conflict of testimony as to what the verbal agreement was, the Circuit Court applied the familiar rule that the written agreement, which contains no reference to it, was controlling. If it is to be received

or considered in any way, what becomes of counsel's argument which he presses in support of other propositions that the conveyance by Chatfield to the company was a breach of the contract.

And again, the undisputed testimony of Johnston, Chatfield and Sayer was to the effect that an application for patent was to be made by Chatfield or the company, which was to be organized by him and his associates, and that in this manner the title was to be perfected and established. This, we claim, was contemplated and covered by the written agreement, and was as much a part of the agreement, whether written or verbal, as the organization of a stock company, and from this point of view, the argument of counsel for appellee on the proposition that complainant's cause of action accrued prior to the issuing of the patent, also falls to the ground.

The Statute of Limitations.

In the third, fourth and fifth divisions of appellee's brief, the point is made that complainant's cause of action is barred by the statute of limitations, regarding the action; first, as a suit for the specific performance of a contract; second, as an action founded upon fraud; and, third, as an action for the enforcement of a trust. Counsel criticises the complaint because "it does not clearly disclose whether the appellant by his bill seeks to specifically enforce a contract, asks for relief by reason of the fraud practiced upon him by the defendants or some of them, or treats Chatfield as a trustee, and his grantees as the owner of property charged with a trust of which they had notice, demanding that such trust be recognized by or enforced against them." In reply to this criticism, it is proper to state that the action was commenced in the State Court under the Colorado Code of Civil Procedure, which abolishes the distinction between forms of action and requires the pleader to state only the ultimate facts, leaving it to the Court to apply the proper remedy.

If we treat the suit as one for the specific performance of a contract, or for the enforcement of a trust, without reference to any fraud, as a matter of course the statute would commence to run from the time the cause of action accrued, which must be determined from the terms of the written agreement in the light of the surrounding circumstances as shown by the evidence. Counsel for appellee claims that appellant's cause of action accrued not later than December 22, 1880, on the conveyance of the Johnston title to the Fulton Mining Company by Chatfield, for the reason that Chatfield by that conveyance put it beyond his power to executes the contract. To this we reply, first, that the Fulton Mining Company being a purchaser with notice, and also a volunteer as to the trust interest, became the successor in trust of Chatfield; second, according to the contention of counsel for appellee, the organization of the Fulton Mining Company and the transfer of the title to that company, was a part of the agreement between Johnston and Chatfield. There was nothing in this transaction or in the first issue of stock by the Fulton Mining Company, which was inconsistent with the recognition of Johnston's interest. On the contrary, more than half the stock, about 55,000 shares, was left in the treasury until after the final settlement with the adverse claimants. But even if Johnston had known of this transaction, and had demanded his interest, he would doubtless have been informed, as he was by Chatfield on numerous occasions thereafter, that he was not entitled to his interest until the title had been perfected by the obtaining of the patent from the United States.

The relocation of the Kansas City claim as the Chatfield, and Chatfield's declaration to Johnson in the spring of the following year that he had concluded not to do the assessment work on the Kansas City, has nothing to do with this question. This only shows Chatfield's bad faith in concealing the fact of the relocation which

Johnston knew nothing about until 1883 on his return from Wood River.

Counsel states that Johnson who knew he must be the principal witness for Chatfield in any suit he might bring or defend on behalf of the J. C. Johnston location, went away to Idaho. This was after he had been informed by Thomson and Sayer of the compromise of the suits, so that his testimony was no longer necessary in any suit, and he was informed by Chatfield that he would receive his interest upon the issue of patent. It mattered not to him what the compromise was because the contract fixed his rights after the termination of the litigation by suit or otherwise, and the acquirement of the legal and equitable title by patent. This result was not accomplished on the completion of the entry in the United States Land Office, as counsel claims, because the legal title still remained in the United States, and the holder of the Receiver's receipt had only the equitable title. Such, at least, was Chatfield's contention.

The statute of limitations has not been pleaded, and cannot be raised at this late day. Johnston's knowledge or means of knowledge of the fraud perpetrated upon him, in the acquisition of his title by Chatfield and his associates, could have nothing to do with his right of recovery under the contract and with the statute of limitations as applied to the contract, since that created an express trust. "In such case, the statute of limitations has no applications and no length of time is a bar" (Perry on Trusts, Section 850). This question was considered in our first brief.

His right of recovery to the other one-eighth is based on fraud and failure of consideration. As to this interest, the contention of counsel for appellee that his right of action accrued on the discovery of the fraud, (or facts, which would cause a reasonable man to suspect fraud,) may have some relevancy, but we submit that the circumstances relied upon to charge him with this notice and knowledge prior to 1885, are not sufficient. There was

nothing brought to his attention which was inconsistent with perfect good faith on the part of Chatfield and the Fulton Mining Company. Chatfield's conveyance to Thomson and Sayer *three days after the date of the contract* was not recorded, and even if it had been, it would not have been constructive notice to Johnston. The same is true of the other conveyances of the title. The record of a deed or other instrument relating to real estate, is constructive notice only to subsequent purchasers, creditors, etc., and it is not to be presumed that it was necessary for Johnston to be on his guard or to be watching the actions of his trustee when the contract gave to him the control and disposition of the property until the title should be perfected, which necessarily required a considerable length of time.

While it is true that his testimony might have been required in the contemplated suits, this became unnecessary after the compromise was effected.

The county seat of Gunnison County, in which the property was situate, was at Gunnison City, where the records of the county were kept, and this place was quite remote and difficult of access in that early day, being separated from Johnston's home at Littleton by the Rocky Mountain range, and almost equally remote and inaccessible from Leadville and Aspen.

In considering the effect of the two former suits, we desire to call the especial attention of the Court to section 2180 of the General Statutes of Colorado, which provides that "if in any action duly commenced within the time herein limited, and allowed therefor, the process shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it was committed, *or if the process shall be abated*, or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form, etc., the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit."

Even assuming that the present action was brought

more than five years after the cause of action accrued, treating it as an action to enforce a trust, or more than three years after the discovery of the fraud, treating it as an action founded upon fraud, it appears that in the second action the process was abated, and while the date of the dismissal of that suit does not appear, it might and would have been shown, had the statute been pleaded, that this action was brought within a year and in fact, within a very short time after the dismissal of the last.

It has also been held that a dismissal for want of jurisdiction is an abatement in consequence of a defect in the form of proceeding. Caldwell *vs.* Harding, 1 Low. C. C., 326 (cited in note to Section 360, Buswell on Limitations), which see.

It appears that the second suit was brought within about a month from the dismissal of the first. Hence, if the first action was duly commenced, the second and the third were both brought in good time, and the bar of the statute would have reference only to the time of the commencement of the first suit.

The seventh point made by counsel for appellee is that the Standard Mining Company and the Fulton Mining Company occupied the position of *bona fide* purchasers, for value. *He admits that his client, the Standard Mining Company, is in no better position in this respect than its grantor, the Fulton Mining Company,* and his proposition is predicated upon the ground, first, that the issue of stock by the Fulton Mining Company in payment for the property was equivalent to a cash payment therefor, and second, that the company would not be affected with notice by reason of the knowledge of its incorporators and directors prior to the organization of the company and while the directors were acting for themselves and not for the company. Of course, the only thing which gave any value to the stock was the property. Hence, the company was not in the position of a purchaser for value. On the second ground, counsel quotes from the case of Iron Wheel Co. *vs.* Davis

Wheel Co., 20 Fed. Rep., 700. In that case it is stated :

"If it had been shown that the Davises formed the corporation for the purpose of transferring to it the inventions and patents which they were in equity obligated to transfer to another, and that they had contributed the capital and were the only persons having a substantial interest in the corporation, it might be successfully urged that the corporation would stand in no better position than theirs. Nothing of this, however, is in the proof."

In the case at bar, this is in the proof, and this is the important feature which distinguishes this case from the one cited.

In the argument of the proposition under consideration, counsel makes a statement, which is repeated elsewhere in his brief, that complainant swore that he never employed Thomson or Thomson and Sayer as his attorneys at any time. There is no such testimony in the record, but Johnston's testimony is clear and positive to the contrary.

The eighth point is that "the appellant has assented and acquiesced in a disposition of the property different from that provided for in the contract creating the trust," by which we suppose is meant that he agreed to the organization of the Fulton Mining Company and consented to the conveyance of the property by Chatfield to that company and the issue of stock for Johnston's interest in the property. Hence, it is claimed that Johnston's remedy was against Chatfield and not against the company. To this we reply, first, it is doubtful whether any such agreement can be considered, since it is not found in the written agreement; second, that the company with notice of the trust was bound to see to the proper application of the purchase price, namely, the stock which it issued in payment for that interest.

The ninth point is that the J. C. Johnston claim was subject to the terms of the prospecting contract under which Johnston was only entitled to a one-fourth in-

terest ; and the tenth is, that such trust affected the property in the hands of Chatfield and his grantees and that this trust was properly executed by the Fulton Mining Company. These points have been considered in our former briefs and also in the first opinion of the Circuit Judge. But some of counsel's statements under these two propositions require some notice.

He states that "every material thing which Johnson told Chatfield about the Smuggler Two was false, as Chatfield learned very soon after talking with Dunscomb, which was before the Acheson suits were brought in the United States Circuit Court." Does counsel mean to say that Johnston's testimony that his partner's had failed to comply with their contract at the time of the Johnston location was false, and does he mean to claim that as a matter of law Chatfield had the right to settle the suits, and then repudiate his contract with Johnston? He says that "having ascertained that Johnston had lied about the title and the conflict, the next step was to settle, and settle he did, if that term be applicable to the acceptance by one party of all the terms dictated by his adversary," but he is careful not to say that Chatfield or his grantee was obliged to surrender, or that his adversaries claimed or recovered the full amount of the trust interest, and that such was not the fact, has been demonstrated in the former briefs. How, then, does it happen that Johnston is entitled to nothing, but that Chatfield and Thomson and Sayer and Dunscomb were entitled to the greater portion of this interest.

Counsel says that "if these cases had been tried and gone to judgment, and the interest of the Fulton Mining Company then allowed, who doubts that Johnston's contract would have availed him nothing?" As noted in the first brief, one of the issues presented in the Acheson suits, was whether or not Acheson and his partners had fulfilled the contract on their part. The bill alleged that they had, and this, of course, was a necessary averment in an equity suit, under the maxim

that he who would ask equity must do equity, and the application of this maxim would certainly have defeated that suit.

The twelfth and last point is that the condition on which Johnston should be entitled to a recovery of his interest has never happened, by which is meant, I suppose, that the Johnston title was never established by Chatfield. This point is fully answered by the first opinion of the Circuit Judge.

On counsel's criticism upon the bill of complaint in this case, we have only to say, that while some inaccuracies may be found, we believe that its averments are in substantial accord with the proofs. Allowance should be made for the fact that the Chatfield contract being in the possession of Messrs. Thomas and Sayer, had to be stated from recollection,—and with reference to the Acheson suits, while it may not be true as was charged in the complaint that these suits were collusive and fraudulent, yet there is much in the record to warrant such an inference. The complaint was not sworn to as counsel for appellee has stated, and a portion of the prayer was that the complainant might have leave to amend his complaint after the production and inspection of the Chatfield contract and other documentary proofs. What ever may be its defects or inaccuracies, the complaint is a model of truth compared with the answer of the Standard Mining Company, on which we commented in the first brief.

Respectfully submitted.

HUGH BUTLER,
Counsel for Appellant.